

The California Commission on Health and Safety and Workers' Compensation



CHSWC 2005 Annual Report

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COMMISSION ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

Introduction

The Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to present the eleventh annual report of its activities to improve health and safety and workers' compensation programs affecting all Californians.

Background

CHSWC, a labor-management commission created by the 1993 workers' compensation reform legislation, is charged with overseeing the health and safety and workers' compensation systems in California and with recommending administrative or legislative modifications to improve their operation. CHSWC was established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent occupational diseases and industrial injuries and to examine those programs in other states.

From its inception in 1994, CHSWC began evaluating the impact of workers' compensation reform legislation with the 1993 reform legislation, a package of bills that made widespread and significant changes to the California workers' compensation system. It continues this work by evaluating subsequent reforms. It is CHSWC's belief that reforming the workers' compensation system is best accomplished by ongoing research, evaluation and monitoring, performed in an independent manner.

Labor and management members of CHSWC develop a Strategic Plan that defines priority areas for research. CHSWC staff carries out this plan through research studies, issue papers, and public forums. Key areas of research include: permanent disability; medical fee schedules; pharmacy costs; medical treatment utilization and quality; general monitoring of the workers' compensation and health and safety system; and administrative efficiencies. In addition, CHSWC works closely and as needed with the Executive and Legislative branches and is often asked to provide expert testimony.

CHSWC is pleased to work with all of the workers' compensation community in the common goal of delivering benefits to injured workers in a prompt and cost-effective manner.

Research Approach

CHSWC conducts its own research or contracts with independent researchers to ensure objectivity, incorporate a balance of viewpoints, and produce the highest-quality objective analysis and evaluation.

CHSWC has engaged in several projects and studies to evaluate how certain areas of the California workers' compensation system have been affected by the reform legislation, as well as other influences, such as the economy.

Research Leads to Policy Changes

CHSWC proposes recommendations for administrative cost savings and more equitable distribution of benefits to workers. Many of CHSWC recommendations for legislative changes have led to reforms. Several recommendations were incorporated into the 2003 reform legislation, Senate Bill (SB) 228 and Assembly Bill (AB) 227, and the 2004 legislation, SB 899, signed by Governor Schwarzenegger.

CHSWC recommendations that have been incorporated into legislative reforms are conservatively estimated to provide savings of approximately \$6 billion annually. These recommendations provide for cost savings and a more equitable distribution of benefits and more adequate compensation to injured workers if appropriately implemented. An additional one-time savings conservatively estimated at \$5.4 billion is expected. In addition, CHSWC recommendations based on new projects are expected to reduce administrative inefficiencies in the workers' compensation system and save an estimated \$280 million to \$2.8 billion.

About CHSWC

The Commission on Health and Safety and Workers' Compensation (CHSWC) oversees the health and safety and workers' compensation systems in California and makes recommendations to improve their operation.

Established in 1994, CHSWC has directed its efforts toward projects and studies to identify and assess opportunities for improvement and to provide an empirical basis for recommendations and/or further investigations. CHSWC also utilizes independent researchers with broad experience and highly respected qualifications to carry out research.

CHSWC activities involve the entire health, safety and workers' compensation community. Many individuals and organizations have participated in CHSWC meetings and fact-finding hearings and have served on advisory committees to assist CHSWC on projects and studies.

CHSWC projects deal with several major areas, including cost and utilization issues, fraud and abuse, streamlining of administrative efficiencies, informational services to injured workers, alternative workers' compensation systems, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the 1993, 2002, 2003, 2004, and 2005 workers' compensation reforms.

The most extensive and potentially far-reaching project undertaken by CHSWC is the ongoing study of workers' compensation permanent disability (PD) in California. Incorporating public fact-finding hearings and discussions with studies by RAND, the CHSWC PD project analyzes major policy issues regarding the way that California workers are compensated for PD incurred on the job.

In its oversight capacity, CHSWC focuses on various aspects of the workers' compensation system in response to concerns raised. These include multi-jurisdictional areas such as anti-fraud activities, as well as various operations of the Division of Workers' Compensation (DWC), such as the judicial function, the lien case workload and the DWC audit program.

At the request of the Legislature, CHSWC has conducted research, issued reports and provided expert testimony on the workers' compensation medical payment system and insurance industry and other critical issues.

CHSWC

Serving all Californians

- Created by the 1993 workers' compensation reform legislation.
- Composed of eight members appointed by the Governor, Senate and Assembly to represent employers and labor.
- Charged with overseeing the health and safety and workers' compensation systems in California and with recommending administrative or legislative modifications to improve their operation.
- Established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases and to examine those programs in other states.
- Works with the entire health and safety and workers' compensation community – employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various programs critical to all Californians.
- Serves as a forum whereby the community may come together, raise issues, identify problems, and work together to develop solutions.
- Contracts with independent research organizations for projects and studies designed to evaluate critical areas of key programs. This is done to ensure objectivity and incorporate a balance of viewpoints and to produce the highest-quality analysis and evaluation.

CHSWC Members Representing Employers



Alfonso R. Salazar

Alfonso R. Salazar, founder of ARS Solutions, an information technology firm for government and public-sector projects, was appointed in 2000 to serve as acting undersecretary for the California Technology Trade and Commerce Agency. There he directed programs that stimulated economic activity for international trade and investment, commercialization of new technologies, small business, rural development, tourism, manufacturing, and other California-based industries.

Mr. Salazar is a member of the board of directors of the Latino Issues Forum. He received a Master of Public Policy degree from the University of Michigan and Bachelor of Arts in political science and ethnic studies from the University of California at Berkeley. He is a Woodrow Wilson National Fellow and has studied free trade policy at the Universidad de Michoacan in Mexico.

Appointed by: Governor



Kristen Schwenkmeyer

Kristen Schwenkmeyer is secretary-treasurer of Gordon & Schwenkmeyer, a telemarketing firm she started with Mike Gordon in March of 1985. Her primary responsibilities include overall administration of operations, budgeting and personnel for a staff of over 700.

Previously, Ms. Schwenkmeyer served as staff aide to Supervisor Ralph Clark of the Orange County Board of Supervisors and Senator John Glenn in Washington, D.C.

Ms. Schwenkmeyer received a Bachelor of Arts degree in political science from the University of California, Santa Barbara.

Appointed by: Senate Rules Committee

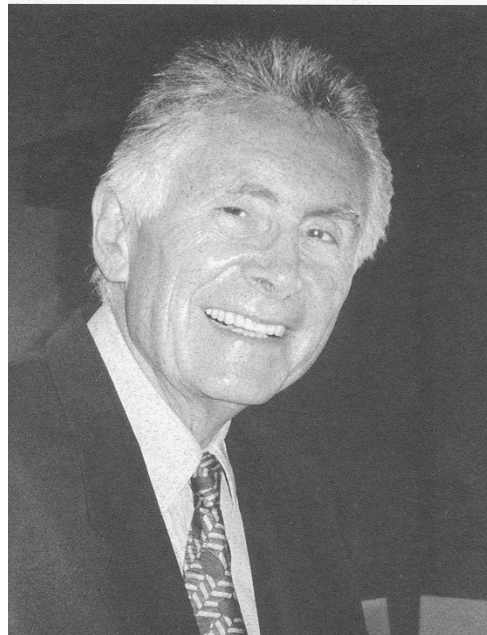
CHSWC Members Representing Employers

Robert B. Steinberg

Robert B. Steinberg is a partner in the law offices of Rose, Klein & Marias and specializes in employee injury, third-party civil damage construction, product liability, asbestos and toxic exposure litigation. He is a fellow of the American College of Trial Lawyers (ACTL), a member of the board of governors Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and trustee of the Asbestos Litigation Group (ALG). He is a past president of the California Trial Lawyers (CTLA) (1985) and a past trustee of the Los Angeles County Bar Association (1987).

Mr. Steinberg received Law and Bachelor of Science degrees from the University of California, Los Angeles.

Appointed by: Speaker of the Assembly



**John C. Wilson
2005 CHSWC Chair**

John C. Wilson is a contract accreditation consultant to the California Association of Joint Powers Authorities. He retired as the Executive Director of the Schools Excess Liability Fund (SELF) in 2002. Mr. Wilson held positions with several organizations, including the California Chamber of Commerce and the California Coalition on Workers' Compensation. He is a former trustee of the Self-Insurers Security Fund and was a gubernatorial appointee to the Fraud Assessment Commission from 1993 to 1998. In previous employment positions, Mr. Wilson was assistant treasurer and risk manager for Di Giorgio Corporation in San Francisco, California. He was also an industrial hygiene, safety representative and administrator for Rockwell International, Space Division of the self-funded Workers' Compensation Program covering 30,000 employees involved in the Apollo and Saturn II space programs.

Mr. Wilson received his Bachelor of Science degree from the Anderson School of Management, University of California, Los Angeles.

Appointed by: Governor



CHSWC Members Representing Labor



Allen Davenport

Allen Davenport is the director of government relations for the Service Employees International Union (SEIU) California State Council. A union member since 1971, Mr. Davenport also was the chief consultant for employment security program -- unemployment insurance, disability insurance, and job training -- on the staff of the state Senate Industrial Relations Committee for seven years.

Mr. Davenport serves on the advisory committee for the workers' compensation information system and was a member of the governing board of the Workers' Compensation Insurance Rating Bureau. He is a former Peace Corps volunteer and a graduate of San Francisco State University.

Appointed by: Speaker of the Assembly



Leonard McLeod

Leonard McLeod is a lieutenant at the California Correctional Training Facility at Soledad and has worked for the Department of Corrections since 1981. He also serves as the early intervention state coordinator/state finance chairman with the California Correctional Peace Officers Association. Previously, he was a police officer with the Watsonville Police Department and a U.S. Army military police sergeant from 1974 to 1978.

Mr. McLeod was a member of the governor's task force on workers' compensation in 1993. He also is a member of the Correctional Peace Officer Foundation and Corrections USA. He is currently a member of the governing board of the Workers' Compensation Insurance Rating Bureau.

Current community activities include serving as a member of the City of Salinas Police Community Advisory Committee, supporting the Salinas Police Activities League, and raising funds for prenatal and health care-related issues.

Appointed by: Governor

CHSWC Members Representing Labor

Darrel “Shorty” Thacker

Darrel “Shorty” Thacker is the Central District Manager for the Northern California Carpenters’ Regional Council. Mr. Thacker also served as the director of field support operations for the Bay Counties District Council of Carpenters and as the Senior Business Representative of Local 22, Carpenters.

Mr. Thacker joined the Millwrights in 1973, where he worked in construction as a journeyman, foreman, general foreman and superintendent from 1973 to 1978. He also worked as a Millwright business agent from 1978 to 1983.

Following his service as a United States Marine in the Vietnam War, Mr. Thacker earned an Associate's degree in mathematics from Fresno City College in 1970.

Appointed by: Governor



Angie Wei

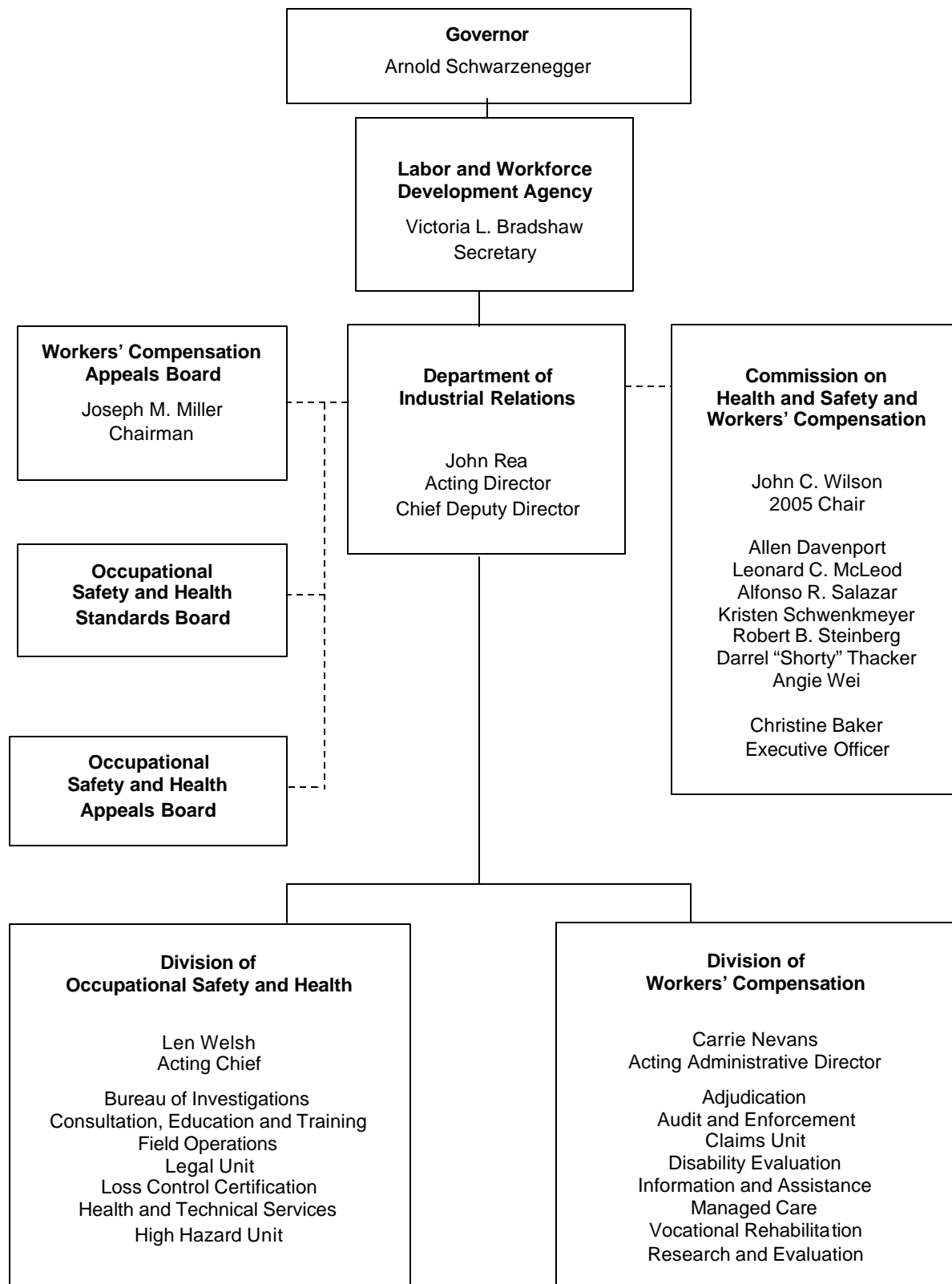
Angie Wei is the Legislative Director of the California Labor Federation, the state AFL-CIO federation. The state federation represents 1,200 affiliated unions and over two million workers covered by collective bargaining agreements. Previously, Ms. Wei was a Program Associate for PolicyLine of Oakland, California, and advocated for the California Immigrant Welfare Collaborative, a coalition of four immigrant rights organizations that came together to respond to cuts in public benefits for immigrants as a result of the 1996 federal welfare reform law.

Ms. Wei holds a Bachelor's degree in Political Science and Asian American Studies from the University of California, Berkeley, and a Master's of Public Policy from the Kennedy School of Government at Harvard University.

Appointed by: Senate Rules Committee



State of California
Health and Safety and Workers' Compensation Functions



CHSWC RECOMMENDATIONS

EVALUATION OF RECENT REFORMS

The Commission on Health and Safety and Workers' Compensation (CHSWC) was established to conduct an ongoing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases and to make recommendations to the Governor and the Legislature for improvements. CHSWC has demonstrated through its research, findings, and recommendations that it is important for the Commission to continue to provide oversight and an independent review of the system.

CHSWC develops and implements comprehensive and appropriate evaluation measurements so that the impact of workers' compensation reforms may be tracked and analyzed.

With the passage of the recent workers' compensation reforms, CHSWC recommends continuing evaluation and monitoring of the system to determine whether the goals of the reforms are being realized.

MEDICAL ISSUES

Many reform provisions address medical and medical-legal issues. These include establishing medical networks, using medical treatment utilization guidelines, moving to qualified medical evaluators/agreed medical evaluators (QMEs/AMEs) as sole suppliers of medical-legal reports, and providing early medical treatment for injured workers.

Medical Treatment Guidelines

New Labor Code Section 77.5, established by Senate Bill (SB) 228, required CHSWC to conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, and including independent medical review, as used in other states, at the national level and in other medical benefit systems.

As Labor Code Section 77.5 required, CHSWC issued a report of its findings and recommendations to the Administrative Director (AD) of the Division of Workers' Compensation (DWC) for purposes of adopting a medical treatment utilization schedule. The report, "CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines," was issued in November 2004 and submitted to the AD of the DWC. It is available at the CHSWC website www.dir.ca.gov/chswc.

A CHSWC study by RAND is making recommendations both on the implementation of medical treatment guidelines and on the need for the State to develop a consistent set of utilization criteria to be used by all payors.

CHSWC RECOMMENDATIONS

CHSWC Recommendations

- CHSWC recommends that the AD of the DWC consider adopting an interim utilization schedule based on the American College of Occupational and Environmental Medicine (ACOEM) guidelines, replaced with respect to spinal surgery by the American Academy of Orthopedic Surgeons (AAOS) guidelines.
- CHSWC recommends that the AD consider adopting interim guidelines for specified therapies, including podiatry, chiropractic, physical therapy, occupational therapy, acupuncture, and biofeedback, consisting of a prior-authorization process in which the indications for treatment and the expected progress shall be documented, and documentation of actual functional progress shall be required at specified intervals as a condition of continued authorization for the specified modalities.
- CHSWC recommends that the AD consider incorporating into the utilization schedule a process to be followed in determining appropriate treatment for conditions that are not addressed by the components of the schedule, so that at least minimum decision-making criteria will be applicable even to conditions that are not subject to any other components of the schedule.
- CHSWC recommends that, after the adoption of interim guidelines as described above, the AD consider adopting additional guidelines to supplement ACOEM guidelines on an ongoing basis as studies and evaluations of those additional guidelines are completed.
- CHSWC recommends that the DWC and CHSWC jointly establish an ad hoc advisory group to receive expert advice and stakeholder input on the many questions that must be addressed in assembling a comprehensive set of guidelines.

Monitoring Medical Care

Issues of the quality of medical care being provided to California's injured workers are being raised. These issues include the timely and convenient access to medical care, restraints on unnecessary care and understanding of medical errors in the provision of care. Studies have shown that the quality of medical care in the United States is not very high and that reporting quality-of-care information back to lower performers can motivate them to improve.

A CHSWC study by RAND is making recommendations on monitoring medical care in the California workers' compensation system with the aim of improving the quality of the medical benefit delivery system.

CHSWC Recommendations

- Develop a conceptual framework for monitoring the California workers' compensation medical care system with feedback from stakeholders. The development of the framework would involve specifying the existing measures and data that might be used, as well as identifying where there are critical gaps in the measurement capabilities for priority components of the monitoring system.

CHSWC RECOMMENDATIONS

- Conduct a demonstration project illustrating how quality monitoring might be used in the California workers' compensation system. This would involve testing the feasibility of developing and utilizing overuse and underused utilization criteria in measuring the appropriateness of medical care provided to injured workers.

CHSWC recommends that the following studies be conducted jointly by CHSWC and DWC:

- Evaluate additional guidelines for inclusion as supplements to the ACOEM guidelines.
- Assess the potential for developing a comprehensive set of guidelines or review criteria to identify overuse and underuse.
- Monitor and evaluate the performance of the medical treatment utilization schedule as valid and comprehensive clinical practice guidelines that address the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.
- Monitor the effect of the statutory caps on chiropractic, physical therapy, and occupational therapy visits and compare these caps to scientifically based, nationally recognized, peer-reviewed guidelines.
- Monitor and evaluate the implementation of the medical treatment utilization schedule in utilization review (UR) processes and practices, including denials of authorization, grants of deviations from the schedule, grants of exceptions to the caps on chiropractic, physical therapy, and occupational therapy visits, and effects upon case outcomes.
- Evaluate the validity and appropriateness of disability management guidelines addressing disability durations and return to work.

Fee Schedules – Resource-Based Relative Value Fee Schedule

DWC uses an Official Medical Fee Schedule (OMFS) to set the maximum allowable amounts that may be paid to providers for medical services. The current fee schedule, based upon relative value units, has been characterized as problematic. CHSWC research by RAND has indicated the following:

- The relative value units in the current OMFS are derived primarily from charge data. This methodology does not relate payments to resources to provide the service and thus leads to inefficiencies in delivery of appropriate services.
- There is no adjustment for geographic differences in the costs of maintaining a physician practice in California. These geographic adjustments align with the costs of providing services.
- The procedure codes are outdated. The OMFS primarily used 1997 current procedure terminology (CPT) codes with some California Workers' Compensation Program (CWCP) specific codes.

CHSWC Recommendations

CHSWC recommends implementation of the Medicare resource-based relative value fee schedule (RBRVS) for the following reasons:

CHSWC RECOMMENDATIONS

- The Medicare RBRVS is based on actual resources used and thus is more fair and predictable than California's current fee schedule, which is based on physician charges.
- The RBRVS is regularly updated unlike the OMFS. Regular updating of the fee schedules will eliminate the need for providers and payors to maintain outdated procedure codes in their billing and claims processing systems.
- The RBRVS schedule has a geographic adjustment for nine California payment areas that aligns payments with the costs of providing services.
- Most providers have relatively few workers' compensation patients but a substantial number of Medicare patients. The administrative burden of treating workers' compensation patients will be reduced if these providers no longer need to remain current on a separate set of OMFS payment rules.
- At least 17 states, the District of Columbia and the federal workers' compensation program have adopted the RBRVS relative values.

Repackaged Drugs

Some physicians dispense repackaged drugs to their patients. These are drugs that the repackagers approved by the Federal Drug Administration (FDA) have purchased in bulk and repackaged into individual prescription sizes for physician office dispensing.

The OMFS for pharmaceuticals is tied to the MediCal pharmacy fee schedule. The MediCal program does not pay for physician-dispensed drugs and, as a result, repackaged drugs are not in the MediCal formulary. Because there is no MediCal fee schedule amount for repackaged drugs, the higher pricing policies under the prior OMFS continue to apply.

CHSWC Recommendation

CHSWC recommends that the Legislature and/or the AD of the DWC consider restricting costs of repackaged drugs that are dispensed by physicians to be more in line with the MediCal pharmacy fee schedule and what pharmacies are allowed to charge.

Burn DRGs

Before 2004, burn cases were exempt from the OMFS hospital inpatient fee schedule. They are now paid at 1.2 times the Medicare fee schedule. There are eight diagnostic-related groups (DRGs) for burn cases, each having a different rate of payment. The payment is fixed in advance and relies on an averaging concept. Some hospitals have had excessive losses on burn cases of injured workers, and there is concern that the exemption allowing additional payment for high-cost cases should be re-instituted for six of the eight DRGs.

The findings of the CHSWC RAND study are that workers' compensation burn cases are less costly on average than Medicare patients in six of the eight DRGs. The DRG for extensive third-degree burns with skin grafts is 4.5 times greater than the others. In addition, there is a difference in the volume of service between workers' compensation and Medicare patients and a difference in the mix of DRGs. OMFS rates may be inadequate for non-extensive burn cases, and those DRGs have not been proposed for exemption. There is variation in payment-to-cost ratios across hospitals.

CHSWC Recommendation

CHSWC suggests that there may not be a need for an exemption for burn DRGs. Further monitoring of the reimbursements for burn DRGs should be conducted.

Spinal Surgery Second Opinion Process

Labor Code Section 4062 provides a procedure for a second opinion if the employer objects to the doctor's recommendation for spinal surgery in the workers' compensation system. The employer has ten days from the receipt of the report to object to the treating physician recommending that spinal surgery be performed.

An uncoded provision of SB 228 (Alarcón) requires that CHSWC conduct a study on the spinal surgery second-opinion process (SSSOP) and issue a report concerning the findings of the study and recommendations for further legislation. Some of the findings of the draft study are that the SSSOP is a well-targeted approach to appropriate review, but that some workers face potentially substantial barriers in complying with SSSOP that may be due to limited access to second-opinion providers.

CHSWC Recommendation

CHSWC suggests that a survey of workers affected by SSSOP process should be conducted to evaluate outcomes and any barriers to treatment.

BENEFIT DELIVERY

Recent reforms made significant changes in workers' compensation benefit delivery, including temporary disability (TD) and permanent disability (PD) benefits and apportionment of PD.

Permanent Disability Rating Schedule

Senate Bill (SB) 899 revises the current Permanent Disability Rating Schedule (PDRS) for the California workers' compensation system. The new schedule, based on the findings from the CHSWC study by RAND, will replace the ratable factor of diminished ability to compete with diminished future earning capacity (FEC). In addition, it will also define the nature of the physical injury or disfigurement to incorporate the American Medical Association (AMA) Guides for both descriptions and percentage impairments.

CHSWC Recommendations

CHSWC recommends evaluating the revised PDRS to assess the impact of the schedule on premium costs and injured-worker outcomes, such as wage loss and FEC. The evaluations would:

- Estimate the impact of schedule and payment changes on replacement rates and wage loss.
- Analyze the impact of changes to psychiatric evaluations.

CHSWC RECOMMENDATIONS

- Evaluate the impact of moving to the AMA Guides.
- Consider the findings of the joint CHSWC-Workers' Compensation Insurance Rating Bureau (WCIRB) study of the PDRS which:
 - Analyzed the initial ratings by the Disability Evaluation Unit (DEU) and compared them to similar case ratings under the previous schedule.
 - Mapped the previous schedule to the new schedule.
 - Re-adjusted FEC to reflect wage loss and mapping studies.
 - Re-evaluated FEC in light of return-to-work (RTW) improvements.
- Ensure that the PD ratings reflect the appropriate average wage losses for specified injuries of injured workers.

Temporary Disability Benefits

SB 899 established a two-year limit on TD indemnity.

CHSWC Recommendations

CHSWC recommends monitoring and evaluating the impact of:

- Limiting TD benefits in most cases to two years from the date payment commences.
- Extending TD to 240 weeks aggregate within the first five years after date of injury for the following injuries or conditions:
 - Acute and chronic hepatitis B.
 - Acute and chronic hepatitis C.
 - Amputations.
 - Severe burns.
 - Human immunodeficiency virus (HIV).
 - High-velocity eye injuries.
 - Chemical burns to the eyes.
 - Pulmonary fibrosis.
 - Chronic lung disease.
- The effect of the two-year TD limit on RTW and injured-worker outcomes.

Apportionment

SB 899 allows apportionment to causation on the PD award.

CHSWC Recommendation

CHSWC recommends:

- Evaluating the impact of apportionment.
- Determining the impact of apportionment on the medical and legal process.
- Evaluating cost-benefit outcomes of this change.

CHSWC RECOMMENDATIONS

- Evaluating the process and procedures of apportionment developed pursuant to the new statutes.
- Providing guidance to physicians on how to apportion under the new statutes.

ANTI-FRAUD EFFORTS

Currently, while there are commendable anti-fraud efforts in the workers' compensation system, according to the Bureau of State Audits, there seems to be a lack of coordination among agencies carrying out such efforts. There is no cohesive and comprehensive strategic plan for identifying and fighting fraud.

At the February 2005 joint CHSWC and Fraud Assessment Commission (FAC) meeting, CHSWC and the FAC established a working group to develop a proposal that would assist the FAC to identify, measure and focus anti-fraud efforts effectively.

CHSWC Recommendations

CHSWC recommends adopting the following recommendations of the FAC and CHSWC working group:

- Identify methods to detect and measure the extent of medical overpayments and underpayments of all types in the workers' compensation system based on data.
- Develop baselines for measuring the level of medical overpayments and underpayments of all types including fraud, waste, abuse, billing and processing errors.
- Specify the most effective methodology to identify illegally uninsured employers and determine the effectiveness and costs and benefits of a matching records program to identify illegally uninsured employers and bring them into compliance.
- Identify the extent of workers' compensation premium and classification of overpayments to help determine the extent of this type of fraud.
- Identify existing anti-fraud resources that could be used by agencies to detect and monitor fraud.
- Determine the extent of underreporting of workers' compensation claims.
- Determine the extent of premium and job-classification fraud.

CHSWC recommends conducting a joint study with the Department of Health Services (DHS) to:

- Evaluate the extent to which Medi-Cal payments may be covering medical treatment costs that are the responsibility of the workers' compensation system.
- Determine the cost to the Medi-Cal system as a result of providing treatment to injured workers that should be provided by employers and insurance carriers pursuant to workers' compensation law.

RETURN TO WORK

A CHSWC study by RAND found that California's permanent partial disability (PPD) system, when compared to other states, has the lowest return-to-work (RTW) rates and the highest attorney involvement.

The litigious nature of the system is problematic because litigation is costly and because it can place employers and injured workers at odds with each other. Conflict between injured workers and their employers is likely to reduce the chance that the injured worker returns to the at-injury employer, damaging long-term economic prospects.

Several Senate Bill (SB) 899 and Assembly Bill (AB) 227 provisions relate to incentives for returning injured workers back to the workplace. The most important reform effort of SB 899 aimed at improving RTW is the 15 percent bump-up/bump-down in PPD benefits. This is potentially a source of substantial savings for employers while also having the potential to improve outcomes for workers if the incentive improves their chances of returning to the at-injury employer.

In addition, AB 227 provided for a new supplemental job displacement benefit (SJDB), which provides that employees who do not return to work for their at-injury employer within 60 days of the end of the temporary disability (TD) period will receive a voucher based on the percentage of the PPD award.

CHSWC Recommendations

CHSWC recommends an evaluation of the current state of RTW of injured workers in California, including the impact of recent legislative RTW changes on:

- Employer costs.
- Disability benefits and durations of disability.
- Worker outcomes, such as long-term wage losses.
- Likelihood that the injured worker returns to sustained work.
- Employer efforts to promote RTW.

CHSWC recommends an evaluation of the current state of vocational rehabilitation or SJDB of injured workers in California, including:

- The impact and time frames of the SJDB provision including the provision for vouchers.
- The clarity of the law with respect to the SJDB provision.
- The worksite modification reimbursement.

Additional recommendations include:

- Recommend a method to construct appropriate RTW incentives for both employers and employees.
- Determine the feasibility of establishing northern and southern California Resource Centers for employers and injured workers that would:
 - Maximize successful RTW after a workplace injury.

CHSWC RECOMMENDATIONS

- Reduce workers' compensation costs.
- Function as resource centers to assist in returning workers to gainful employment.
- Identify workers who need retraining or RTW accommodation with their existing employer.
- Utilize the SJDB funds to identify appropriate training programs.
- Assess employee skills and match with appropriate training program or job placement.

The treating physician in the workers' compensation system can help determine when the injured worker is able to return to work and help identify the kinds of work the injured worker can do safely while recovering. CHSWC encourages increased coordination by physicians, employers, and claims adjusters to return injured workers back to work.

CHSWC recommends that more information from medical providers is needed on returning workers back to the workplace.

INFORMATION FOR WORKERS AND EMPLOYERS

Injured workers and employers need information about the workers' compensation system.

CHSWC Recommendation

CHSWC recommends that information about the workers' compensation system be made available in several languages in addition to English and Spanish, such as Chinese, Vietnamese, Tagalog, Cantonese, and Korean.

INSURANCE INDUSTRY STABILITY

California Insurance Market

In 1993, the workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it beginning in 1995 with an open-competition system of rate regulation in which insurers set their own rates based on "pure premium advisory rates" developed by the WCIRB.

Subsequent to the repeal of the minimum rate law, the workers' compensation insurance market has been very unstable. Major changes were noted:

- Insurers seeking to retain or add to their market share engaged in price competition on premium costs.
- Many insurance carriers shifted the risk of their workers' compensation claims to other insurance companies after open rating.
- Several insurance companies are currently experiencing problems with payment of claims.
- Over 25 insurance companies have gone under liquidation since 2000.

CHSWC RECOMMENDATIONS

CHSWC Recommendations

To stabilize the workers' compensation insurance market and reduce workers' compensation costs and premium rate to employers, CHSWC recommends:

- Reviewing the ability of the California Insurance Guarantee Association (CIGA) to assess the deductible portion of a worker's compensation insurance policy with a deductible provision.
- Amending the Labor Code to provide that CIGA would not be responsible for the increased amounts payable on a medical bill that is paid late, if the delay were caused by the insolvent insurer.
- Reviewing the provisions of the Labor Code to provide for the State Compensation Insurance Fund (SCIF) to be excluded from the risk-based capital (RBC) requirements established by the National Association of Insurance Commissioners (NAIC).

US Longshore and Harbor Workers' Compensation Insurance Market in California

In response to a request from Assembly Member Vargas' office, CHSWC studied the feasibility of creating a guaranty fund for United States Longshore and Harbor (U.S. L & H) workers' compensation insurance carrier insolvencies. Currently, in California, there may be insufficient guaranty fund coverage of U.S. L & H claims.

Currently, employers whose U.S. L & H insurance carriers become insolvent are held liable for payment of claims. Employees face either non-payment of claims or extreme delays in payment under the U.S. Department of Labor (DOL) Special Fund. The U.S. DOL Special Fund may cover the claims, but only if the employer is placed in imminent danger of going insolvent or has gone insolvent.

A special U.S. L & H guaranty fund in California has the potential to benefit U.S. L & H employers and labor:

- Employers whose U.S. L & H insurance carriers have become insolvent would not be held liable for payment of claims if California has an established guaranty fund for long shore cases.
- Employees could avoid either non-payment of claims or extreme delays in payment.

CHSWC Recommendations

To stabilize the workers' compensation insurance market and reduce workers' compensation costs and premium rate to employers, CHSWC recommends that:

- The Legislature consider creating a separate U.S. L & H guaranty account to be administered by CIGA.
- The guaranty fund be used prospectively.
- A cap be included in the initial assessment.
- The assessment be passed on to U.S. L & H insured employers only.

EXPLORING FUTURE DIRECTIONS

Integration of Medical and Indemnity Benefits

Employers in California experience higher costs for workers' compensation claim medical care than employers in most other states, and California ranks highest in workers' compensation claim premium rates. Suggestions have been made to more closely coordinate or combine workers' compensation medical care with the general medical care provided to patients by group health insurers in order to reduce overall administrative costs and derive other efficiencies.

CHSWC Recommendation

CHSWC recommends that a pilot project be conducted on 24-hour care in California.

Carve-Outs

Recent reforms have provided that an employer and a union may negotiate any aspect of benefit delivery if employees are eligible for group health benefits and non-occupational disability benefits through the employer.

CHSWC Recommendations

CHSWC recommends the following:

- Promote carve-outs to the workers' compensation community with identified incentives.
- Identify requirements that would make the carve-outs more effective.
- Consider establishing service-level agreements among all participants in the carve-outs.
- Consider establishing performance standards and measurements for parties in the carve-outs.
- Consider incorporating a health and safety educational and/or training component for carve-outs.
- Conduct dissemination and evaluation of best practices of carve-out programs.
- Update the evaluation of the success of carve-outs.
- Evaluate the establishment of a seamless health and disability system in qualifying carve-outs, without regard to the cause of the sickness or disability.
- Permit agencies of the State of California to enter into carve-out agreements.

Injury Prevention

WOSHTEP

Labor Code Section 6354.7 specifies that CHSWC establish a Worker Occupational Safety and Health Training and Education Program (WOSHTEP).

CHSWC Recommendations

CHSWC recommends the continuation of the program to:

- Establish a statewide network of trainers to offer the WOSHTEP curriculum.
- Conduct outreach and dissemination of the Multilingual Health and Safety Resource Guide and the WOSH Specialist course.
- Conduct outreach to small employers, including the Small Business Resources Program.
- Conduct dissemination of the WOSHTEP curriculum to carve-outs.
- Incorporate a health-promotion module into the WOSHTEP curriculum.
- Develop additional supplementary modules for the WOSHTEP curriculum as needed.
- Translate the WOSHTEP curriculum into other languages, such as Spanish, Chinese, Tagalog, Cantonese, Vietnamese and Korean.

Young Workers

CHSWC Recommendations

CHSWC recommends providing ongoing outreach for young workers through statewide activities including:

- The Young Worker Leadership Academy. The goals of this Academy, held for the first time in February 2005, were to teach youth about workplace health and safety and their rights on the job; to help youth start thinking about ways to ensure that young people do not get hurt on the job; and to provide a forum for these youth to plan for specific actions they can take in the own communities to promote young worker safety.
- Safe Jobs for Youth Month is during May of each year. The objective is to protect young workers from injury by raising community awareness about child labor and workplace health and safety issues.

Workers' Compensation and Public Safety Officer Retirement

"SCIF Retirement Bonus" is a name of the workers' compensation claim filed at the time of retirement so a retiring California Highway Patrol (CHP) officer, firefighter, or police officer can augment retirement benefits with a permanent disability award or settlement.

CHSWC RECOMMENDATIONS

Members of the community have expressed concern regarding retirement package benefits for public safety officers. Some people have commented that the current system provides incentives for excessive disability claims upon normal retirement.

CHSWC Recommendation

CHSWC recommends an ongoing review of this issue to see how injuries of public safety officers can be prevented, how costs can be minimized, and how a quick RTW for essential safety officers can be ensured.

Occupational Health and Safety Risks at Small Firms

Some observers have noted that compliance with OSHA places more burdens on small businesses than on larger ones. As a result, OSHA has made some efforts to give special enforcement treatment to small firms. One problem with deregulating small firms is that they appear to be the least safe. However, the only solid findings regarding the safety of small firms apply to establishment size rather than firm size.

CHSWC Recommendation

CHSWC recommends considering a study that could help design an information program for small businesses, focusing on the particular causal patterns and violations that have caused occupational injuries, illnesses, and deaths in their industry.

Combined Occupational Injury-Reduction Efforts with Health-Promotion Programs

Occupational safety and health professionals have traditionally focused attention on the control or elimination of work hazards to protect all exposed workers. Health-promotion professionals have often found that improved individual health behaviors can be encouraged in the workplace. There is some evidence that occupational injury-prevention programs are more effective in combination with programs that promote overall worker health.

CHSWC Recommendation

CHSWC recommends examining the effectiveness of combining occupational injury-reduction efforts with health-promotion programs.

Improve Efficiency of Administration

CHSWC recommends:

- Improving administrative efficiency and reducing the transaction costs of processing paper checks for the payment of unemployment and disability benefits in the State of California. Approximately \$280 million to \$2.8 billion in administrative savings could be achieved by:
 - Utilizing electronic deposit by mandating that it be offered by payors to payees in lieu of paper check disbursements.

CHSWC RECOMMENDATIONS

- Utilizing electronic benefit transfer (EBT) cards for un-banked recipients.
 - Considering electronic payment of medical bills.
- Requiring that the DWC report on the promptness of first payment by insurance carriers on a regular basis.
- Monitoring and reviewing the implementation of the \$100 workers' compensation lien filing fee.
- Revising the reporting system for filing information on workers' compensation claims. Currently, employers and insurers are required to file the employer's report (DLSR Form 5020, Employer's Report of Occupational Injury or Illness) and the doctor's first report (DLSR Form 5021, Doctor's First Report of Occupational Injury or Illness). Now that the Workers' Compensation Information System (WCIS) is in process and this reporting could be done electronically, the manual filing process could be eliminated for a savings of about \$20 million per year to avoid duplicate reporting.¹
- Studying and reviewing concerns regarding access to qualified medical evaluators (QMEs).
- Developing a system for the Workers' Compensation Appeals Board (WCAB) to accept electronic medical reports from insurance carriers.
- Conducting a review of the WCIS to ensure that it meets the goals of the workers' compensation system and stakeholders for ongoing monitoring.
- Developing a framework and research agenda with stakeholders for ongoing monitoring of the workers' compensation system.
- Taking steps in the interim to ensure systematic collection of summary data from insurers, self-insured employers, and public agencies.

Plan for Older Workforce

The changing demographics of the workforce may require employers to hire older workers. Older adults may need to consider working longer to insure their financial security in old age.

CHSWC recommends the development of:

- A research agenda to address the impact of older workers on the health, safety, and workers' compensation systems.
- Policies that emphasize health, workplace safety and injury prevention for older workers.
- Policies for the workers' compensation system that assist employers and aid older workers.

¹ The estimates of savings are based on information from a CWCI ICIS report. The report estimated that the cost of generating a medical benefit notice is \$10. For the purposes of these estimates, we are assuming that generating and mailing an employer report and a doctor's report cost the same as generating and mailing a benefit notice. Estimated savings are \$10.00 per transaction when converting from paper to electronic submission. Therefore, \$10 savings per report x 2 reports (doctor and employer) per filing x 1 million filings per year = \$20 million in savings per year.

SYSTEMS OVERVIEW

BACKGROUND

California Workers' Compensation System

Workers' compensation in California was created in 1913 as a bargain between employers and labor. Workers received the assurance that if they were injured on the job, they would receive prompt medical care and compensation without having to prove in court that the employer is at fault. Employers received protection from potentially high tort damages awarded by juries so that they could have predictable, manageable injury compensation and treatment costs. This bargain between employers and labor was historic, maintaining the incentives for employers to create a safe workplace and allowing workers to remain productive and healthy.

Today, workers' compensation, a \$25 billion system, which is the first and largest social insurance program, delivers benefits to claimants in the form of temporary disability (TD) and permanent disability (PD), medical benefits (both evaluation & treatment), vocational rehabilitation or Supplemental Job Displacement Benefits (SJDB), and death benefits.

Changes to the System

California has undergone significant reforms in the workers' compensation system, starting in 1989, continuing in 1993, and again in 2002, 2003, and 2004. The recent reforms have been characterized by the following changes.

Workers' Compensation Reforms: Medical Costs

California's workers' compensation medical costs have grown by over 120 percent from 1997 to 2004.

Prior to the reforms, overall costs for workers' compensation medical treatment costs were estimated to be 50 percent to 100 percent higher than group health. Several reforms were adopted in the recent legislative sessions to control medical costs including:

Utilization

- Caps on chiropractic, physical therapy, and occupational therapy visits, limiting each type of therapy to 24 visits.
- Evidence-based guidelines for treatment of different injuries/illnesses.
- Medical Provider Networks (MPNs) established, resulting in closer integration between workers' compensation and group health.
- Elimination of the treating physician presumption of correctness on medical treatment issues for all dates of injury, except when employee has predesignated a personal physician.

Fee Schedules

- New fee schedules for inpatient hospital, hospital outpatient departments, and ambulatory surgery centers based on the Medicare fee plus 20 percent.
- Outpatient surgery clinics added to the list of prohibited self-referrals by doctors.
- A new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.

Treatment Guidelines

- Adoption of the American College of Occupational & Environmental Medicine (ACOEM) interim guidelines.
- Medical Treatment Utilization Schedule – to be adopted by December 1, 2004, but still in development.
- “Presumptively correct on the issue of extent and scope of medical treatment.”
- Replaces presumption that treating physician is correct.

Agreed Medical Evaluator (AME)/Qualified Medical Evaluator (QME) and Medical Dispute Resolution

Senate Bill (SB) 899 changed the medical dispute resolution process in the workers' compensation system. The new reforms of 2004 required that:

- The dispute resolution process through an AME or a single QME applies to all disputes including compensability of claim, PD evaluation, and all other disputes.
- Unrepresented employee gets a QME examination by requesting a panel to be assigned, then selecting one QME from the panel.
- Represented employee gets an AME if parties agree, but if they do not agree on AME, then either side requests a panel, each side strikes one name, and the remaining physician is the QME who will conduct the examination. The new procedure for represented cases applies to dates of injury on or after January 1, 2005.

Workers' Compensation Reforms: Indemnity Benefits

Indemnity Benefit Increases in 2002 Reforms

- Benefits prior to Assembly Bill (AB) 749 (2002) had not kept up with inflation — there had been no increases for 10 years.
- AB 749 indexed benefits for TD benefits – much like other states.
- After AB 749, PD benefits for 2006 were approximately equal to the rates in 1984 after inflation.

Indemnity Benefit Reductions in 2004 Reforms

- Reductions in the number of weeks of PD benefits for ratings under 15 percent.

SYSTEMS OVERVIEW

- Caps on the TD benefit after two years.
- Tiered benefit system on PD when return to work (RTW) is offered.
- AB 227 repeals the workers' compensation vocational rehabilitation benefit and the SJDB is established:
 - Employees receiving vocational rehabilitation services prior to January 1, 2004, shall be entitled to continuing services until they are concluded, but such services shall not be provided to any other employees on and after January 1, 2004.
 - AB 227 creates a new SJDB.
 - Under SJDB, workers not returning to work receive a voucher for education-related retraining or skill enhancement or both.

Changes in the Permanent Disability Rating Schedule (PDRS)

Permanent partial disability (PPD) benefits are meant to compensate workers for their disability. However, a Commission on Health and Safety and Workers' Compensation (CHSWC) study by RAND found that the current California Permanent Disability Rating Schedule (PDRS) is procedurally complicated, expensive to administer, and inconsistent.

- Earnings losses for similarly rated impairments for different body parts vary dramatically.
- PD ratings vary among doctors evaluating the same or similar injuries, due in part to significant reliance on subjective criteria.

Pursuant to CHSWC recommendations, SB 899 requires a revised PDRS for injuries after 2004:

- One of the basic principles of a PD rating, "diminished ability to compete," is now replaced by "diminished future earning capacity."
- The new PDRS, adopted January 1, 2005, incorporates the American Medication Association (AMA) Guides for both descriptions and percentage impairments.

Recent Reforms to Apportionment include:

- Employer is liable for the percentage of PD directly caused by the injury.
- Any prior awarded disability is conclusively presumed to continue.
- Accumulation of all PD awards is not to exceed 100 percent for any one region of the body.

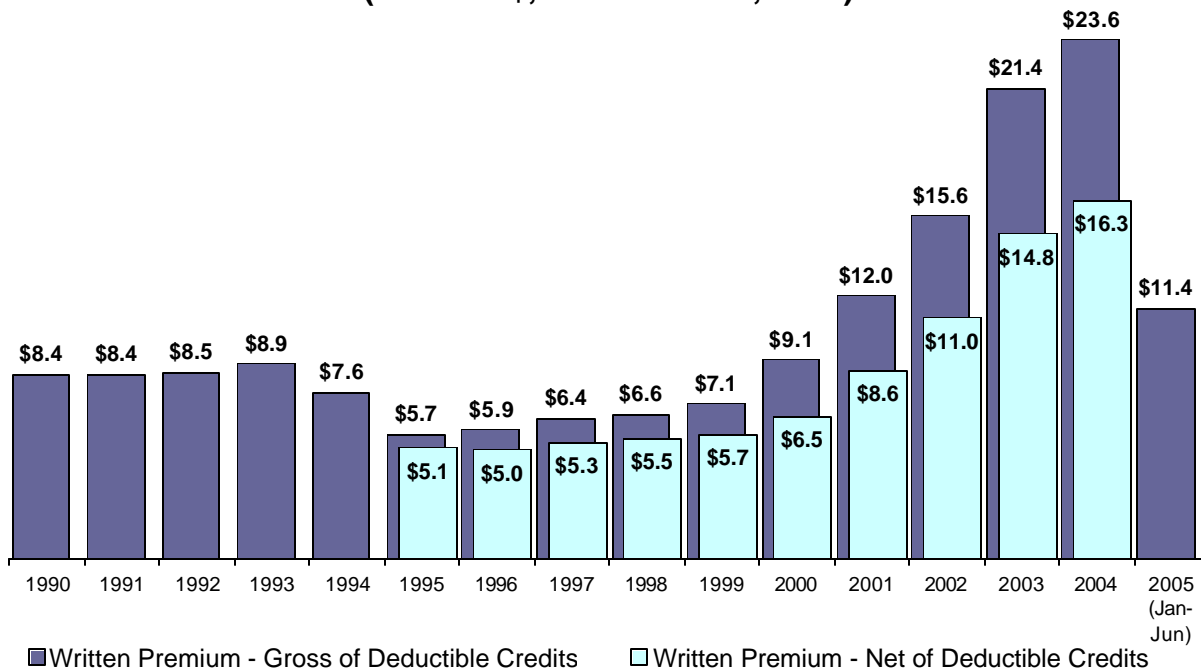
COSTS OF WORKERS' COMPENSATION IN CALIFORNIA

Costs Paid by Insured Employers

Workers' Compensation Written Premium

The Workers' Compensation Insurance Rating Bureau (WCIRB) defines written premium as the premium an insurer expects to earn over the policy period. Workers' compensation premium decreased from 1993 to 1995, increased in the latter part of the decade, then increased sharply through 2004. The written premium for 2004, \$23.6 billion, is approximately 10.7 percent above the written premium reported for 2003 and 51.9 percent above the written premium reported for 2002. According to WCIRB, in 2005 premiums are beginning to drop as a result of the rate decreases that began in 2004. This premium decline will likely continue for several years.

Workers' Compensation Written Premium
(in billion\$, as of June 30, 2005)



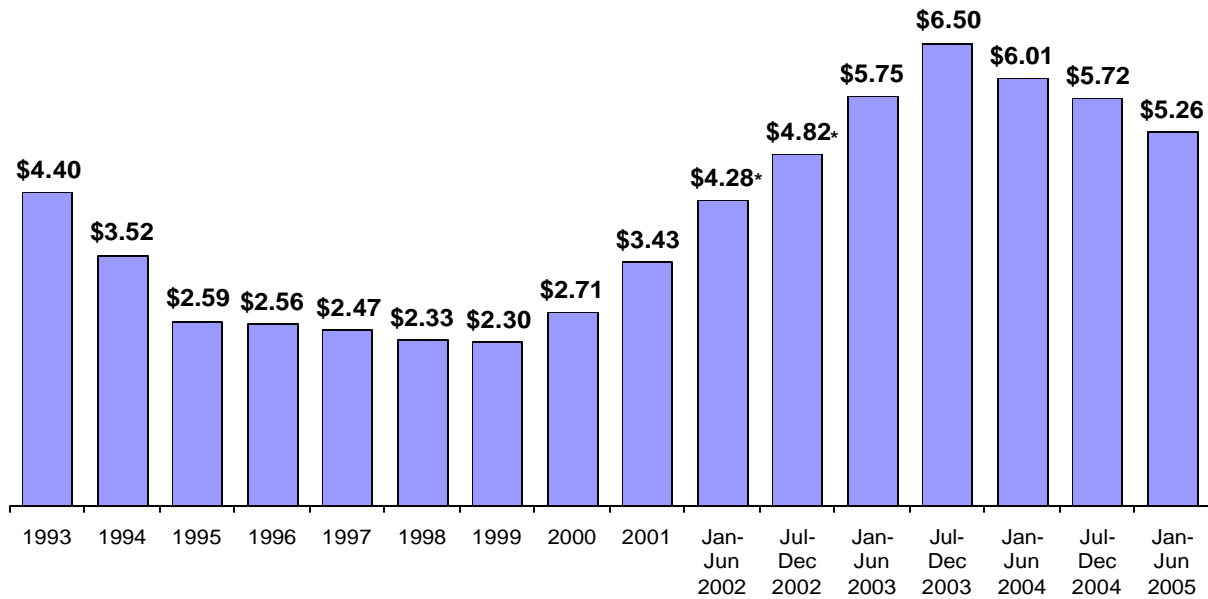
Data Source: WCIRB

The following chart shows the average workers' compensation premium rate per \$100 of payroll. The average dropped during the early- to mid-1990's, stabilized during the mid- to late-1990's, and then rose significantly beginning in 2000 up to December 2003.

However, the average statewide insurer rate of \$5.72 per \$100 of payroll for policies written in the second half of 2004 was 12.0 percent below the average rate charged for the second half of 2003. The average statewide insurer rate of \$5.26 per \$100 of payroll for policies written in the first half of 2005 was 8.4 percent below the average rate charged for the second half of 2004.

SYSTEMS OVERVIEW

**Average Workers' Compensation Insurer Rate Per \$100 of Payroll
as of June 30, 2005**



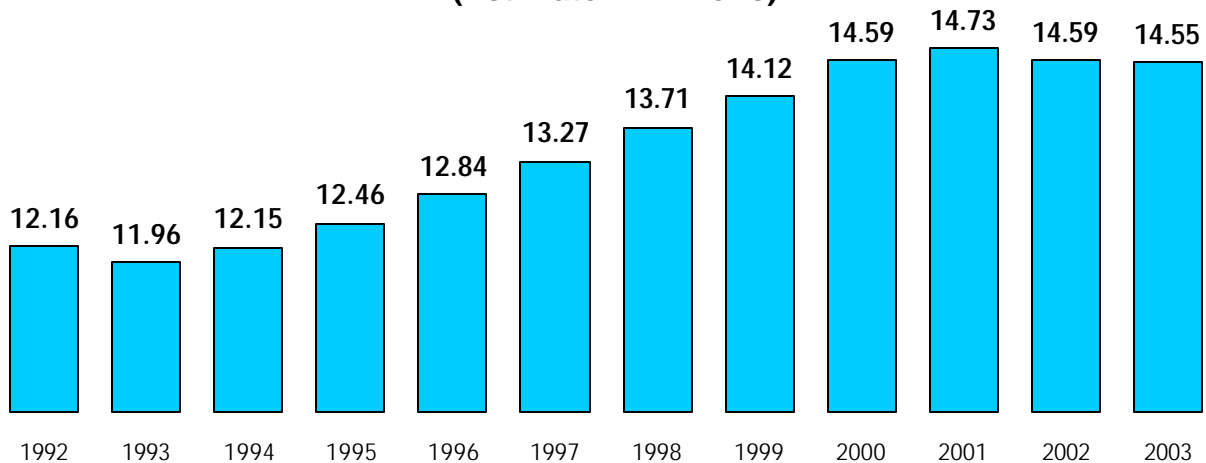
Data Source: WCIRB

* Excludes the impact of the adopted changes to outstanding policy year 2002 pure premium rates effective January 1, 2003

Workers Covered by Workers' Compensation Insurance

Although the total earned premium increased from 1995, the number of workers covered by workers' compensation insurance also increased.

**Workers Covered by WC Insurance in California
(Estimate in Millions)**

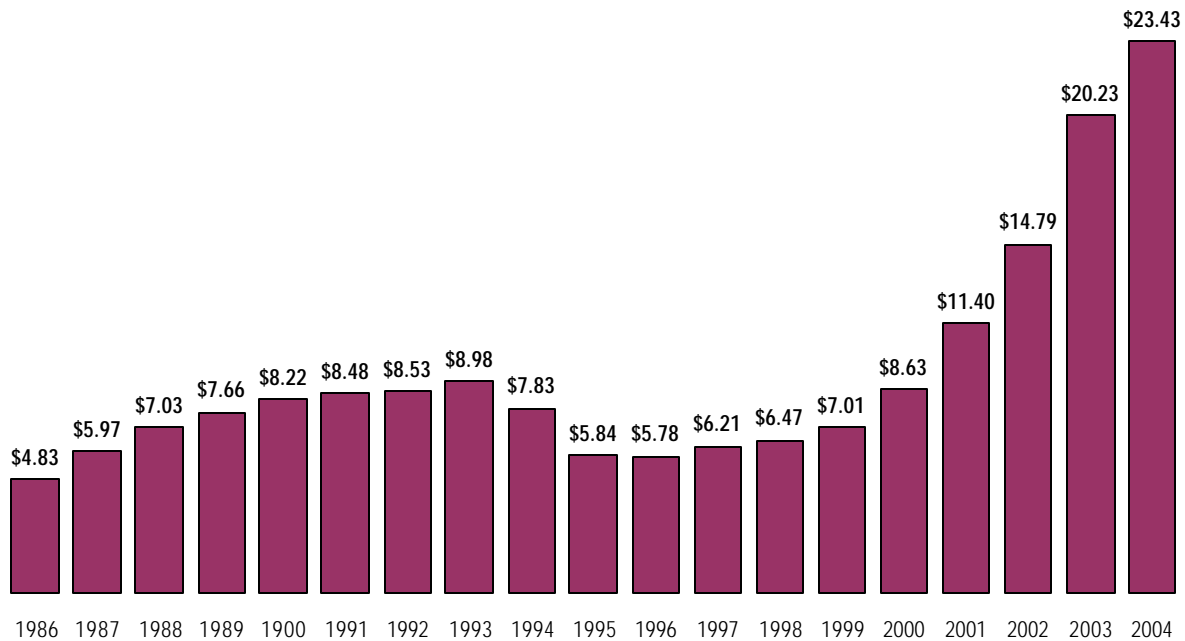


Source: National Academy of Social Insurance (NASI)

SYSTEMS OVERVIEW

Total Earned Premium

Workers' Compensation Earned Premium (In Billion\$, as of June 2005)

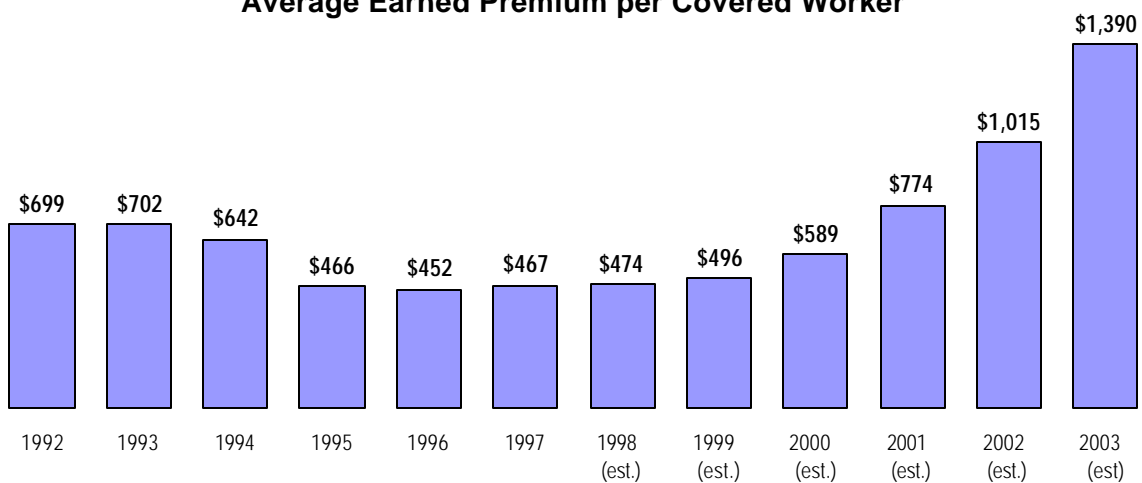


Source: WCIRB

Average Earned Premium per Covered Worker

As shown in the graph below, the average earned premium per covered worker dropped during the early- to mid-1990's, leveled off for a few years, and then started to rise in 2000.

Average Earned Premium per Covered Worker



Data Sources: WCIRB and NASI Calculations: CHSWC

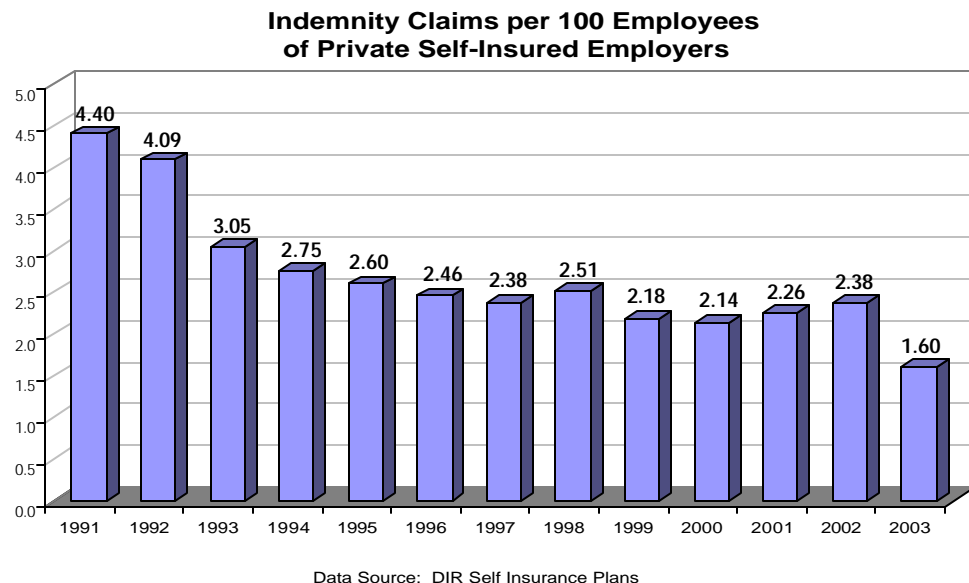
Costs Paid by Self-Insured Employers

Private Self-Insured Employers

The following chart shows the number of private self-insureds between 1991 and 2003. The number of private self-insured employers declined slightly between 1991-1992, increasing by 25 percent between 1992 and 1993. Between 1993 and 1997, the number of employees working for private self-insured employers remained fairly stable, declining by 14 percent between 1997 and 1998. Since 1998, the number of employees remained fairly stable and increased by 43 percent between 2002 and 2003.



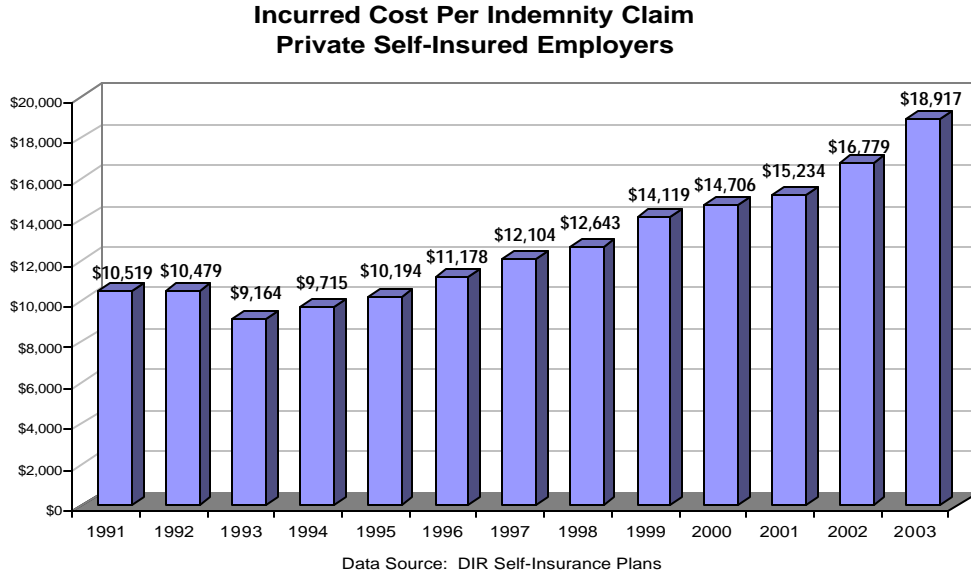
The number of indemnity claims of employees working for private self-insured employers declined between 1991 and 1997 by 46 percent, followed by a slight increase of 5 percent from 1997 to 1998. From 1998 to 1999, the number of indemnity claims decreased by 13 percent and stayed stable until 2002, after which the number of indemnity claims decreased by 33 percent in 2003.



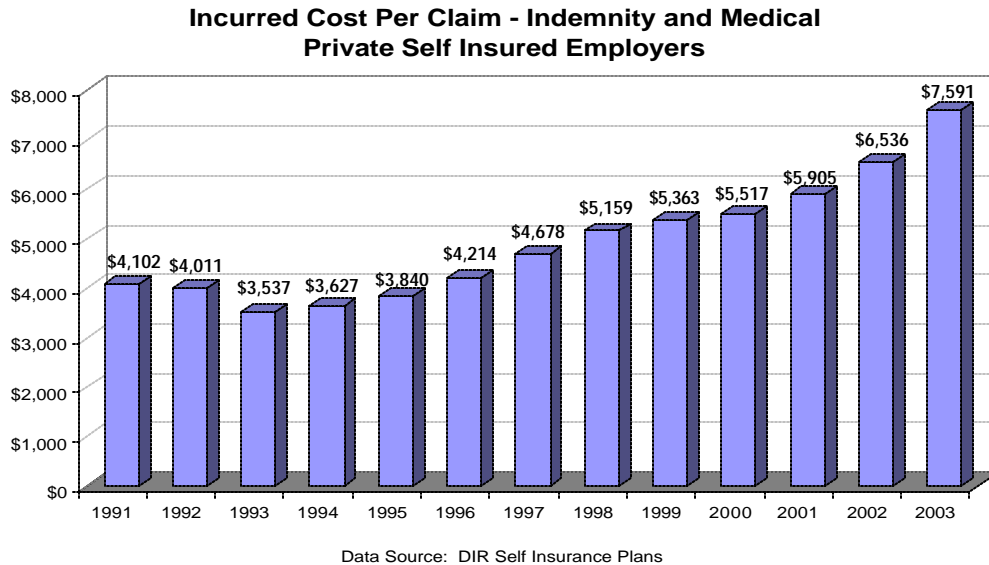
SYSTEMS OVERVIEW

Incurred Cost per Claim: Private Self-Insurers

The following chart shows the incurred cost per indemnity claim for private self-insured employers. During 1991 and 1992, the incurred cost per indemnity claim was stable. It dropped by 13 percent from 1992 to 1993, and between 1993-2002, the incurred cost per indemnity claim grew steadily, increasing by 13 percent between 2002 to 2003.



The average incurred cost per indemnity and medical claim for private sector was stable during 1991 and 1992, followed by decline of 13 percent in 1993. The incurred cost per claim levelled off from 1993 to 1995. And then increased steadily until 2002. From 2002 to 2003, the incurred cost per indemnity and medical claim grew by 16 percent.

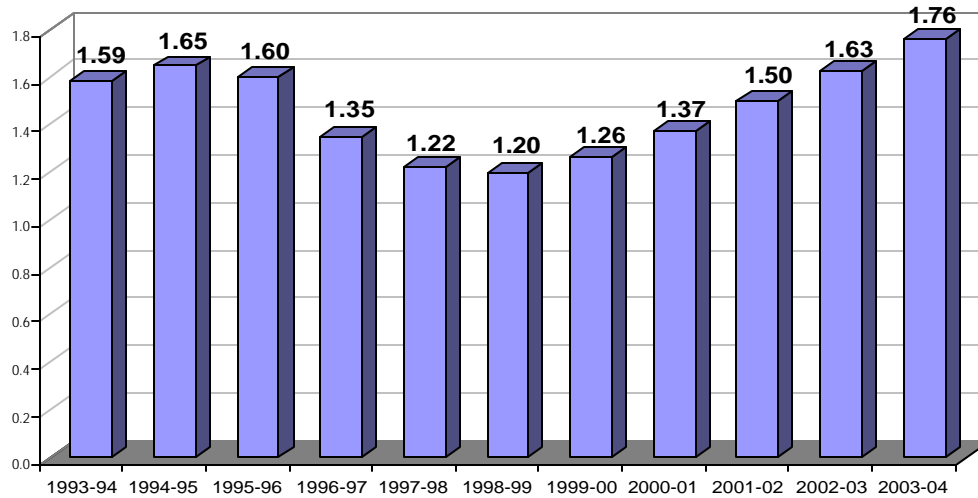


SYSTEMS OVERVIEW

Public Self-Insured Employers

The following chart shows the number of public self-insureds between 1993-1994 and 2003-2004. The number of public self-insured employers declined between 1994-1995 and 1998-1999. Between 1998-1999 and 2003-2004, the number of employees working for public self-insured employers grew by 44 percent.

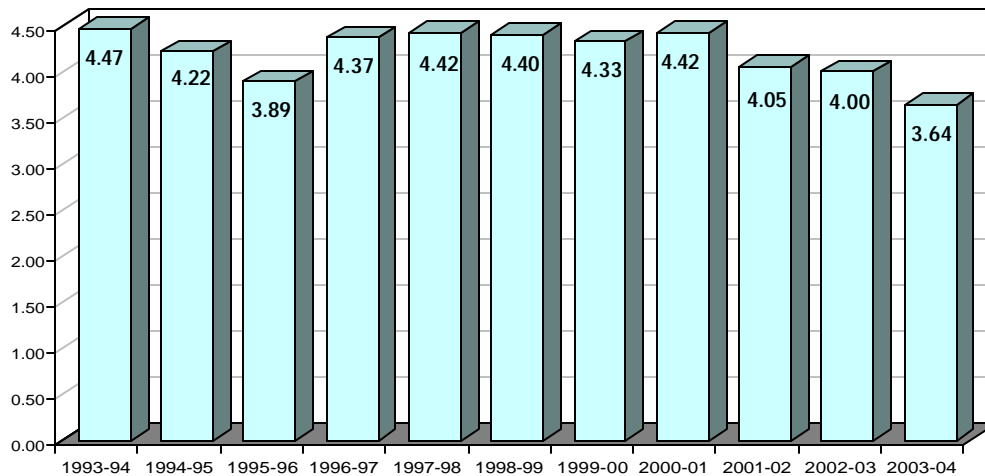
**Number of Employees of Public Self-Insured Employers
(in Millions)**



Data Source: DIR Self Insurance Plans

The number of indemnity claims of employees working for public self-insured employers has remained steady between 1996-1997 to 2000-2001. Between 2000-2001 and 2003-2004, the number of indemnity claims decreased steadily.

**Indemnity Claims Per 100 Employees
of Public Self-Insured Employers**



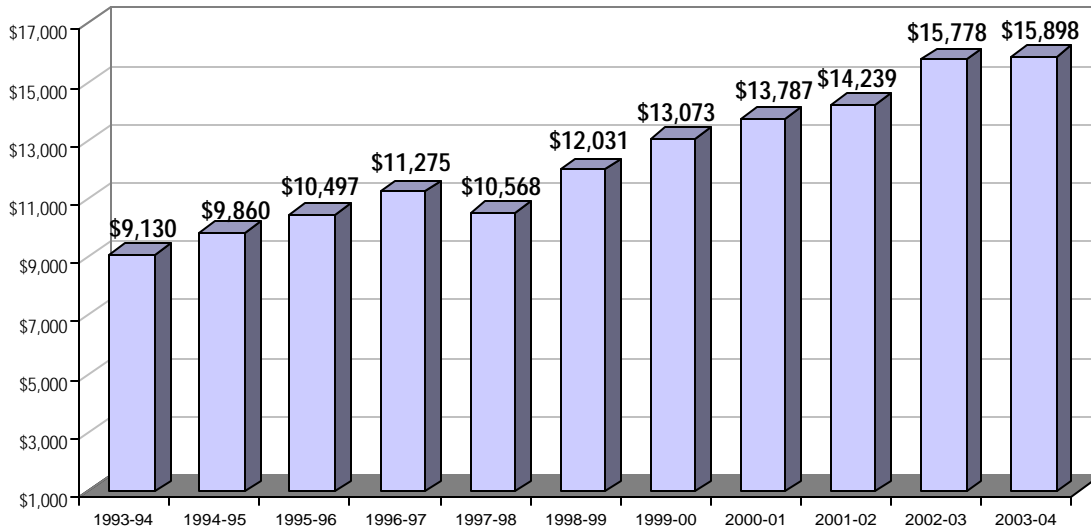
Data Source: DIR Self-Insurance Plans

SYSTEMS OVERVIEW

Incurred Cost per Claim for Public Self-Insured Employers

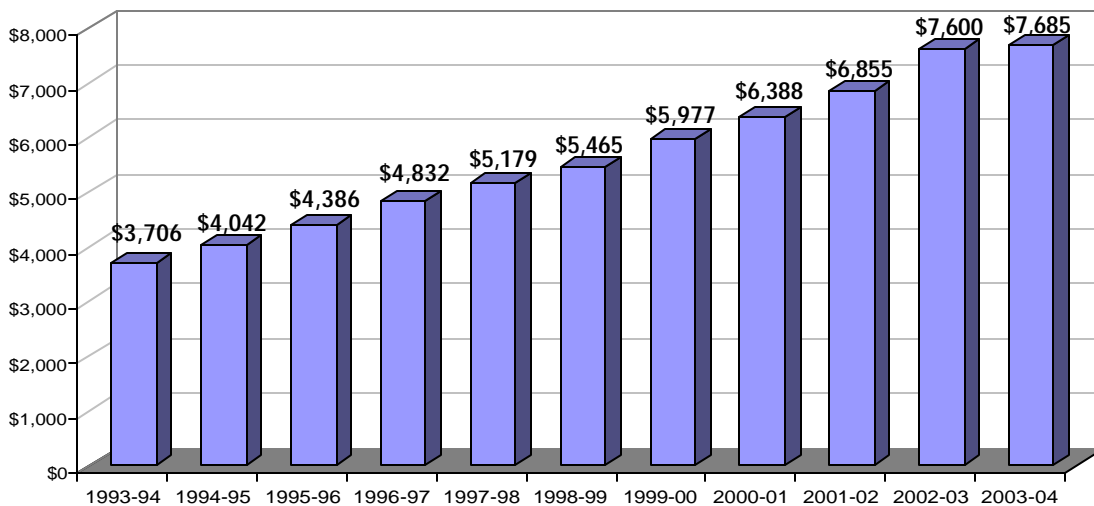
The following chart shows the incurred cost per indemnity claim for public self-insured employers. Between 1997-1998 and 2002-2003, the incurred cost per indemnity claim has increased at an average rate of about 6 percent. Between 2002-2003 and 2003-2004, the incurred cost per indemnity claim has slightly increased from \$15,778 to \$15,898, an increase of less than 1 percent.

**Incurred Cost Per Indemnity Claim
of Public Self-Insured Employers**



Data Source: DIR Self Insurance Plans

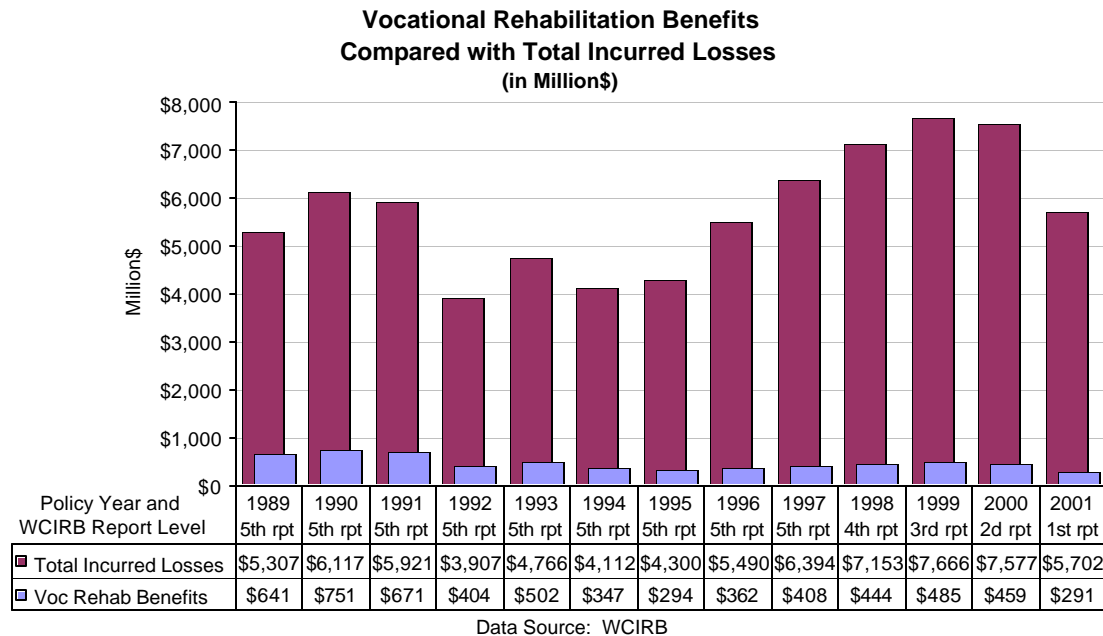
**Incurred Cost Per Indemnity and Medical Claim
Public Self-Insured Employers**



Data Source: DIR Self Insurance Plans

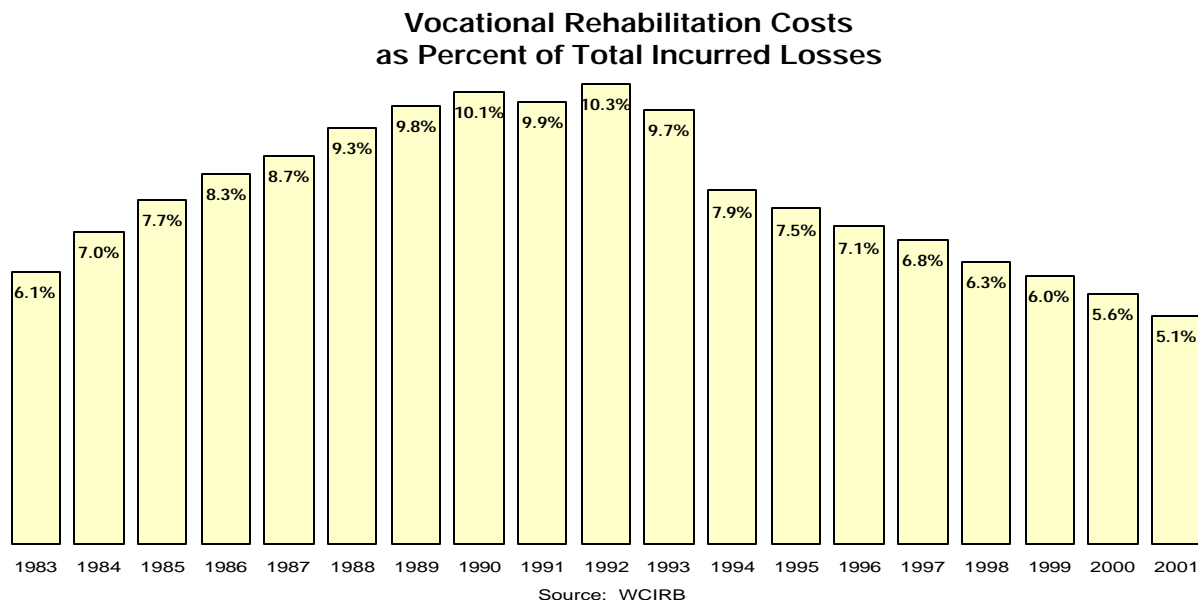
SYSTEMS OVERVIEW

Vocational Rehabilitation Costs



Please note that from 1989 through 1997, information was obtained from level 5 WCIRB reports, which have the most mature information. Information for later years was derived from WCIRB reports with levels 1 through 4, as shown on the above chart.

The chart below shows the vocational rehabilitation costs as a percentage of total incurred losses. The vocational rehabilitation costs as a percentage of losses reached their peak in 1992 and have been declining since then.



SYSTEMS OVERVIEW

WORKERS' COMPENSATION SYSTEM EXPENDITURES: INDEMNITY AND MEDICAL BENEFITS

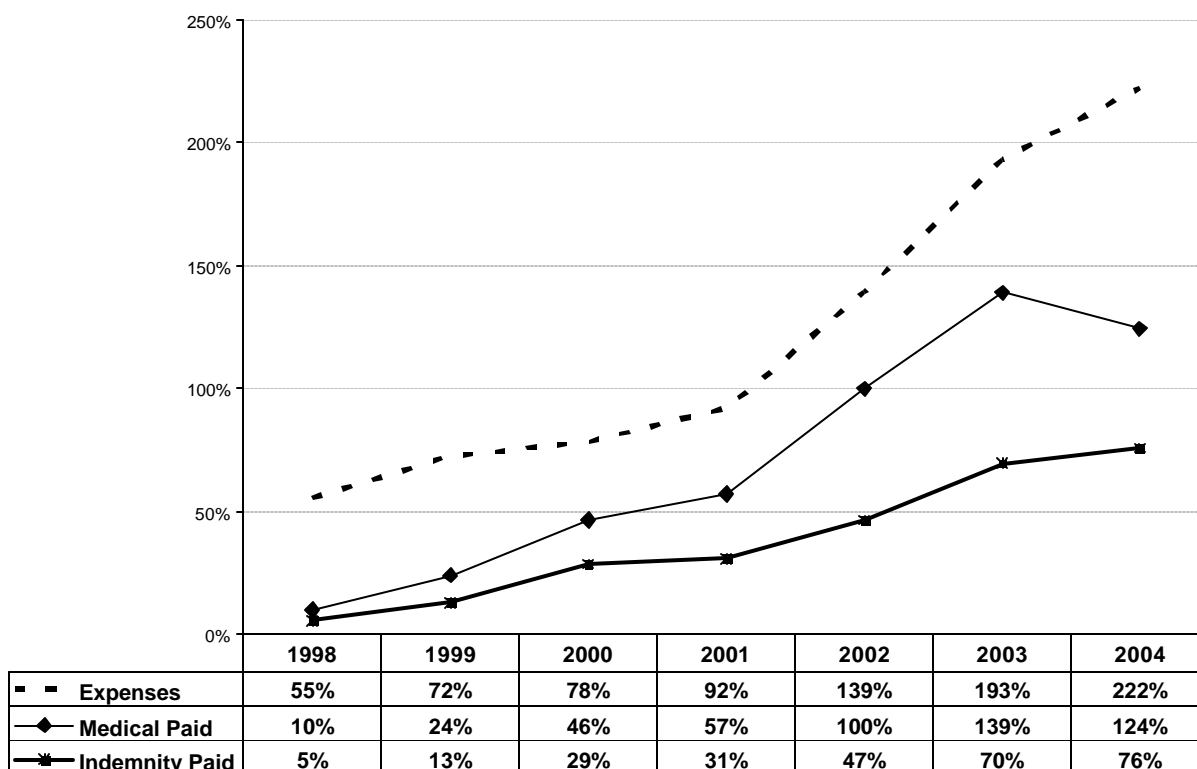
Overall Costs

Methodology for Estimating

Please note that the estimated percentages of total system costs are based on insured employer costs from the WCIRB. The assumption is that this data applies also to self-insureds. Since self-insured employers are estimated to be 20 percent of all employers, the total system costs are calculated by increasing the WCIRB data for insured employers to reflect that proportion.

Growth of Workers' Compensation Costs

Workers' Compensation Costs Percent Growth by Year Compared With 1997

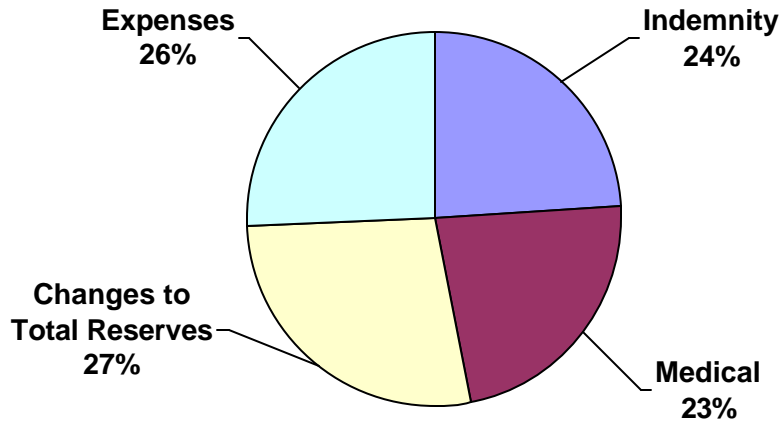


Data Source: WCIRB

Percentage of Workers' Compensation Costs by Type

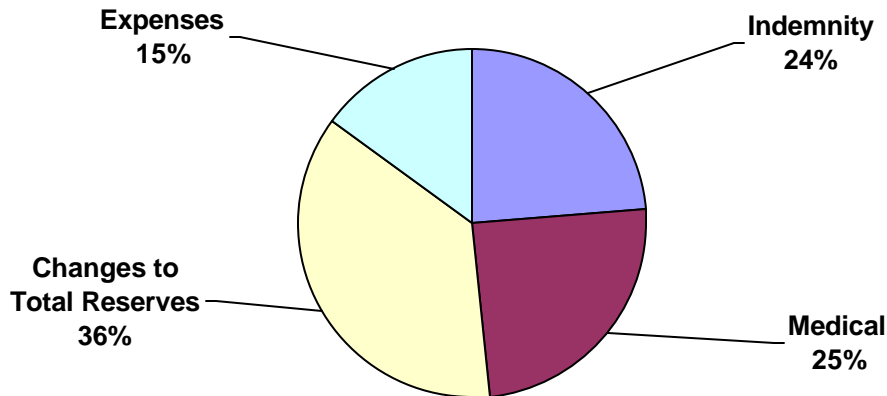
The following chart shows the proportion of the types of benefits paid by all employers. (NOTE that these estimated percentages of total system costs are derived from insured employer costs from the WCIRB. The assumption is that this data applies also to self-insureds.)

**Estimated Percentage Costs by Type
All Employers, 2004**



Data Source: WCIRB

**Estimated Percentage of Costs by Type
All Employers, 2003**



Data Source: WCIRB

SYSTEMS OVERVIEW

Indemnity Benefits

WCIRB provided the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 80 percent of all employers, estimated indemnity benefits are shown on the following chart for the total system and for self-insured employers as well.

System-wide Estimated Costs of Paid Indemnity Benefits

Indemnity Benefit (Thousand\$)	2003	2004	Change
Temporary Disability	\$2,498,083	\$2,449,301	-\$48,781
Permanent Total Disability	\$89,138	\$108,528	\$19,390
Permanent Partial Disability	\$2,367,731	\$2,555,420	\$187,689
Death	\$58,376	\$63,361	\$4,985
Funeral Expenses	\$1,750	\$1,819	\$69
Life Pensions	\$41,535	\$39,775	-\$1,760
Vocational Rehabilitation	\$732,485	\$732,825	\$340
Total	\$5,789,098	\$5,951,029	\$161,931

Paid by Insured Employers

Indemnity Benefit (Thousand\$)	2003	2004	Change
Temporary Disability	\$1,998,466	\$1,959,441	-\$39,025
Permanent Total Disability	\$71,310	\$86,822	\$15,512
Permanent Partial Disability	\$1,894,185	\$2,044,336	\$150,151
Death	\$46,701	\$50,689	\$3,988
Funeral Expenses	\$1,400	\$1,455	\$55
Life Pensions	\$33,228	\$31,820	-\$1,408
Vocational Rehabilitation	\$585,988	\$586,260	\$272
Total	\$4,631,278	\$4,760,823	\$129,545

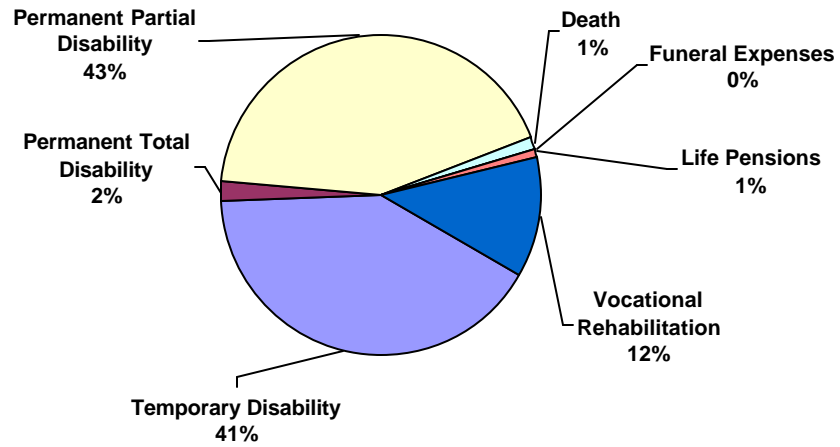
Paid by Self-Insured Employers*

Indemnity Benefit (Thousand\$)	2003	2004	Change
Temporary Disability	\$499,617	\$489,860	-\$9,756
Permanent Total Disability	\$17,828	\$21,706	\$3,878
Permanent Partial Disability	\$473,546	\$511,084	\$37,538
Death	\$11,675	\$12,672	\$997
Funeral Expenses	\$350	\$364	\$14
Life Pensions	\$8,307	\$7,955	-\$352
Vocational Rehabilitation	\$146,497	\$146,565	\$68
Total	\$1,157,820	\$1,190,206	\$32,386

SYSTEMS OVERVIEW

Indemnity Benefits Paid by Insured Employers – 2004

Indemnity Benefits Paid in 2004- Insurers

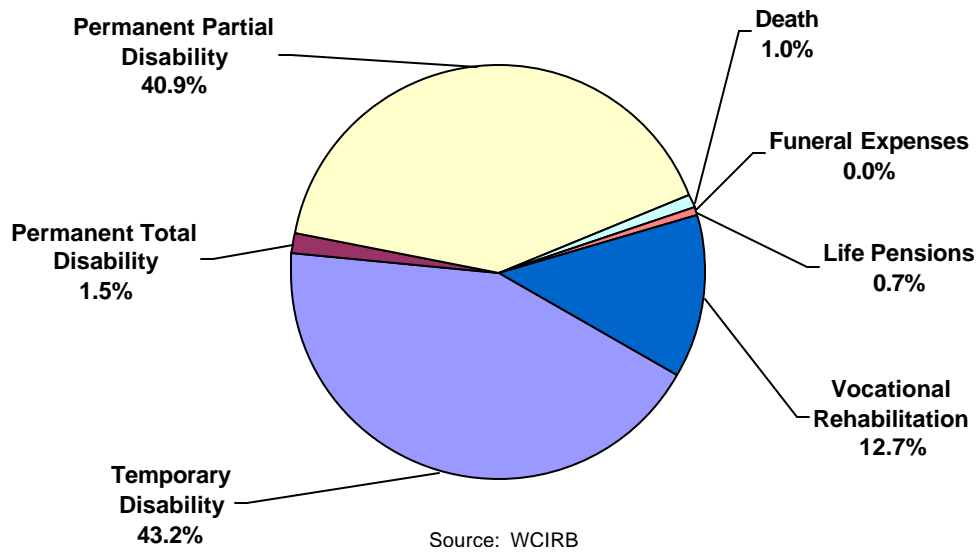


Data Source: WCIRB

Indemnity Benefits Paid by Insured Employers - 2003

SYSTEMS OVERVIEW

Indemnity Benefits Paid in 2003 - Insurers

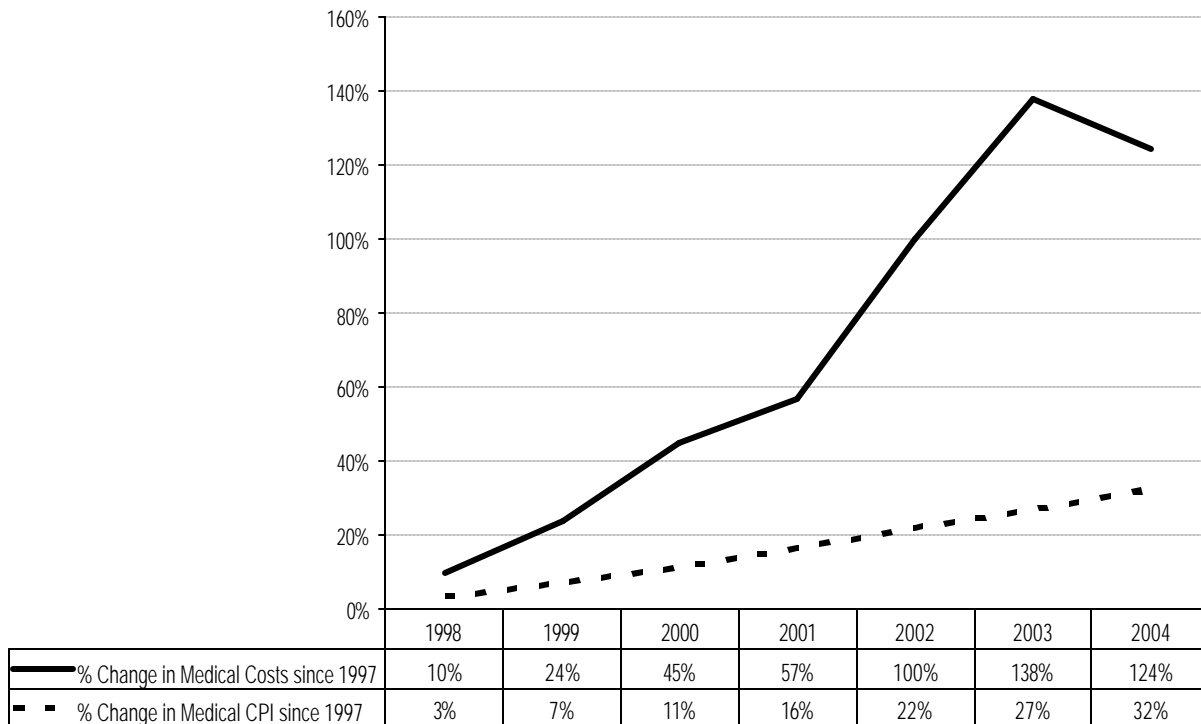


Medical Benefits

Workers' Compensation Medical Costs vs. Medical Inflation

The following chart compares the growth rates of California's workers' compensation medical costs paid by insurers and self-insured employers with the medical component of the Consumer Price Index (CPI), also known as the "Medical CPI," a term used by economists to describe price increases in health care services.

**Growth of Workers' Compensation
Medical Costs Compared to Medical Inflation Rate
Percent Change Since 1997**



Data Sources: WCIRB; Bureau of Labor Statistics

SYSTEMS OVERVIEW

Distribution of Medical Benefits: Where Does the Workers' Compensation Dollar Go?

System-Wide Estimated Costs - Medical Benefits Paid

Medical Benefits (Thousand\$)	2003	2004	Change
Physicians	\$3,207,516	\$2,984,963	-\$222,554
Capitated Medical	\$11,386	\$13,255	\$1,869
Hospital	\$1,676,395	\$1,571,848	-\$104,548
Pharmacy	\$569,395	\$597,528	\$28,133
Payments Made Directly to Patient	\$223,903	\$181,526	-\$42,376
Medical-Legal Evaluation	\$160,429	\$200,509	\$40,080
Medical Cost Containment Programs*	\$243,709	\$194,713	-\$48,996
Total	\$6,092,733	\$5,744,340	-\$348,393

Paid by Insured Employers

Medical Benefits (Thousand\$)	2003	2004	Change
Physicians	\$2,566,013	\$2,387,970	-\$178,043
Capitated Medical	\$9,109	\$10,604	\$1,495
Hospital	\$1,341,116	\$1,257,478	-\$83,638
Pharmacy	\$455,516	\$478,022	\$22,506
Payments Made Directly to Patient	\$179,122	\$145,221	-\$33,901
Medical-Legal Evaluation	\$128,343	\$160,407	\$32,064
Medical Cost-Containment Programs*	\$194,967	\$155,770	-\$39,197
Total	\$4,874,186	\$4,595,472	-\$278,714

Paid by Self-Insured Employers**

Medical Benefits (Thousand\$)	2003	2004	Change
Physicians	\$641,503	\$596,993	-\$44,511
Capitated Medical	\$2,277	\$2,651	\$374
Hospital	\$335,279	\$314,370	-\$20,910
Pharmacy	\$113,879	\$119,506	\$5,627
Payments Made Directly to Patient	\$44,781	\$36,305	-\$8,475
Medical-Legal Evaluation	\$32,086	\$40,102	\$8,016
Medical Cost-Containment Programs*	\$48,742	\$38,943	-\$9,799
Total	\$1,218,547	\$1,148,868	-\$69,679

* Figures for medical cost-containment programs are based on a sample of insurers who reported medical cost-containment expenses to the WCIRB.

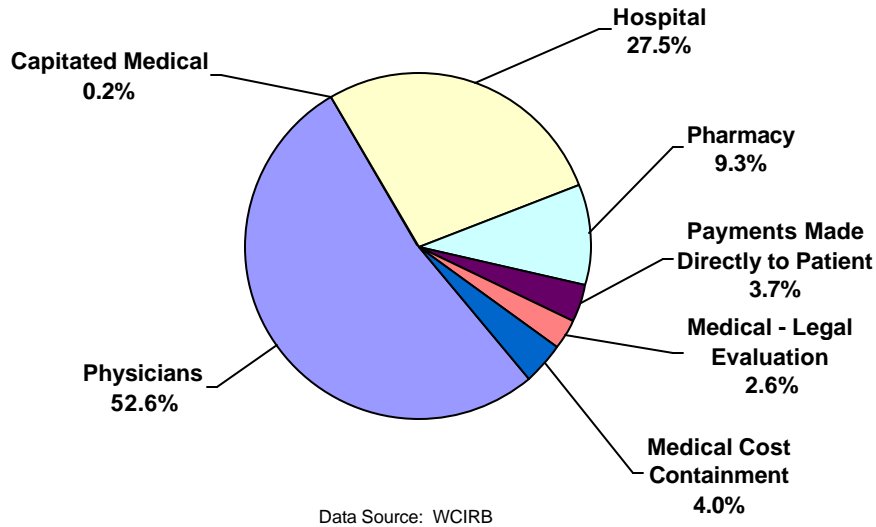
** Figures estimated based on insured employers' costs.

Self-insured employers are estimated to comprise 20 percent of all California employers.

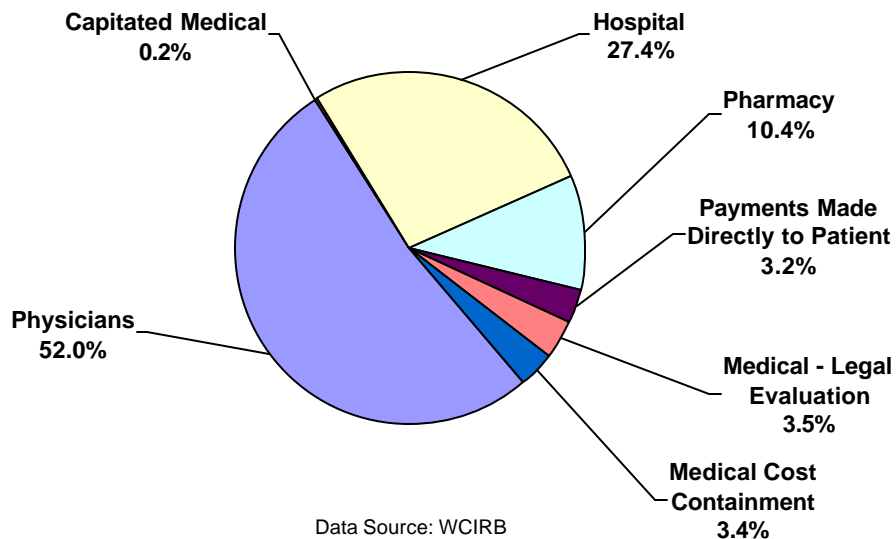
As reported by the WCIRB, workers' compensation medical benefits paid during 2004 by insured employers totaled \$4.6 billion, a decrease from the \$4.9 billion paid in 2003. The biggest decrease of 20 percent was seen in the medical cost-containment category.

SYSTEMS OVERVIEW

Medical Paid in 2003 - Insurers



Medical Paid in 2004 - Insurers



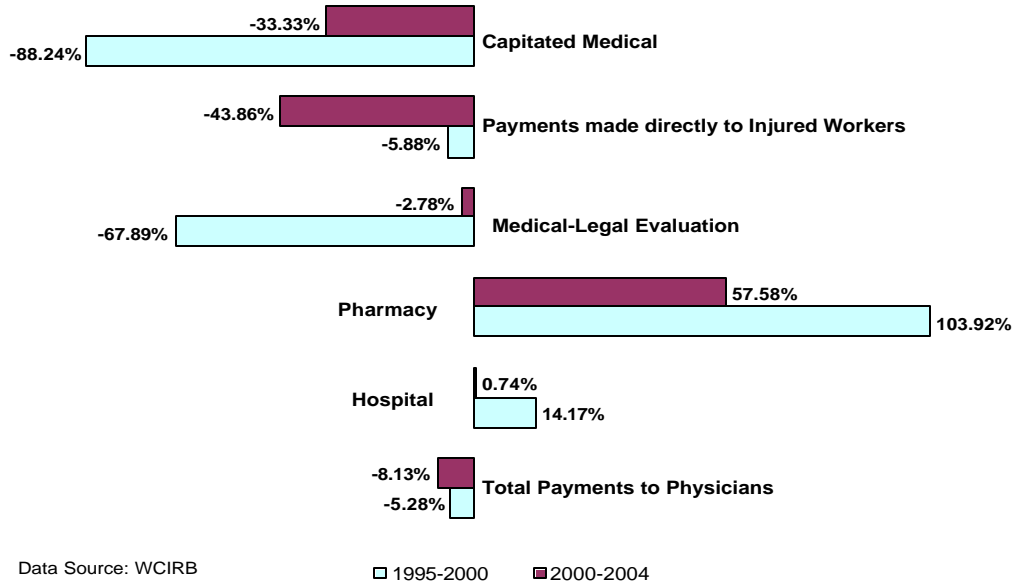
In 2004, medical benefits comprised about 50 percent of workers' compensation costs. The biggest categories of payments, as shown in the chart above, were physicians and hospitals making up about 80 percent of medical benefits paid by insured employers.

SYSTEMS OVERVIEW

Changes in Medical Payments by Type of Provider

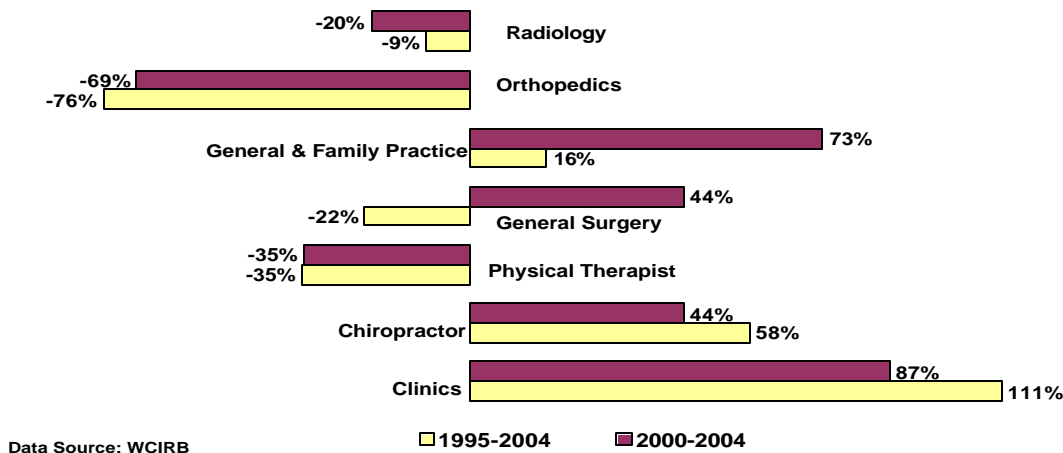
The chart below shows the increase in the distribution of medical payments to categories of providers. The biggest increase in the distribution of medical payments for both 1995-2000 and 2000-2004 was to pharmacies followed by hospitals. During the period of 2000-2004, there were less increases and greater decreases in the distribution of medical costs for every category.

**Components of Percentage Change in Distribution of Medical Cost Paid.
By Provider Type. 1995-2004**



The chart below shows the change in distribution of medical costs paid by provider type. The biggest increase in the years between 2000 and 2004 was in the clinics, general and family practice, general surgery, and chiropractic providers.

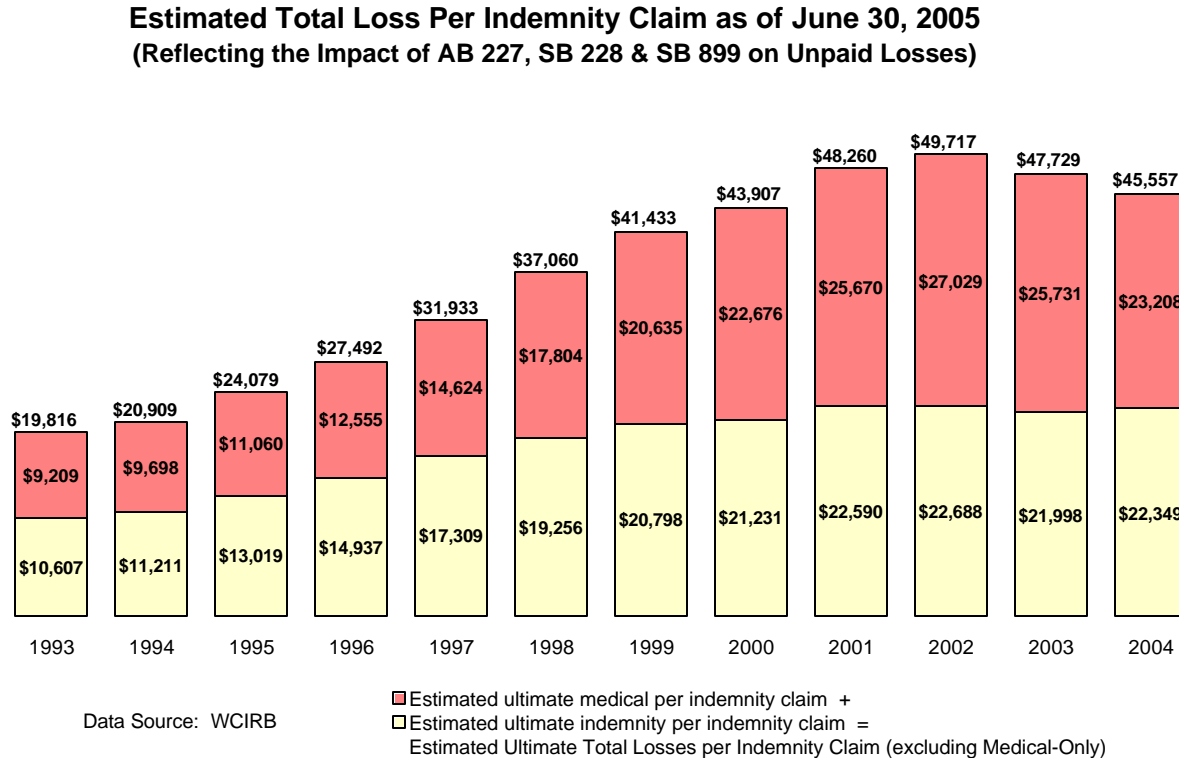
**Percentage Change in Medical Cost Paid to Type of Physician
From 1995 to 2004 and From 2000 to 2004**



SYSTEMS OVERVIEW

Average Claim Costs

Although since 1993, the overall medical costs have been increasing more quickly than other workers' compensation costs and medical inflation, the average medical cost of an indemnity claim has leveled off and has started to decline slightly since 2002.

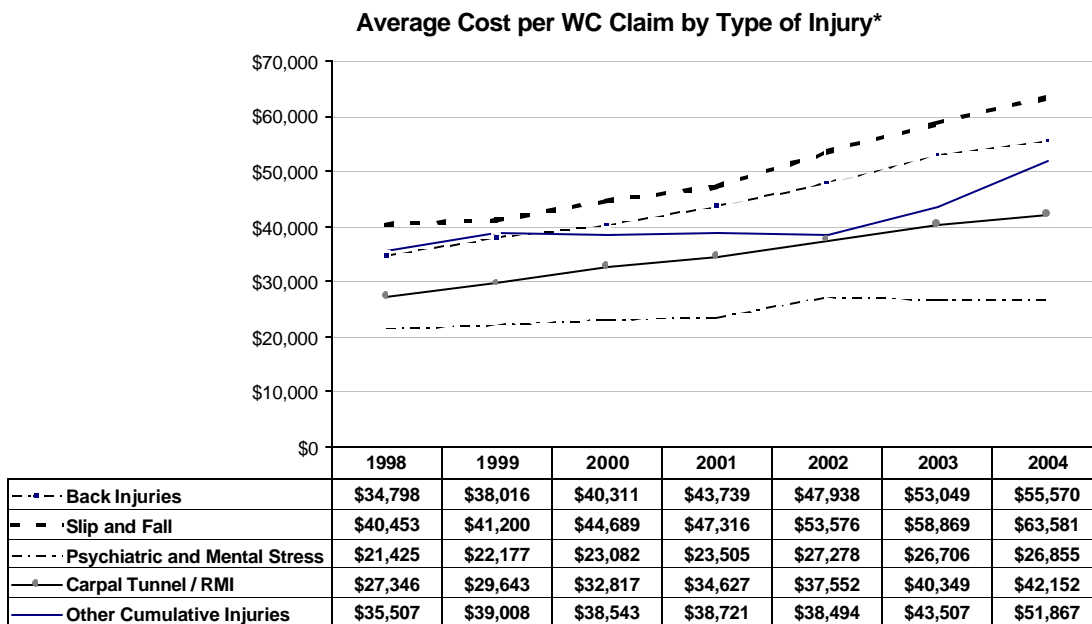


Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

SYSTEMS OVERVIEW

Average Cost per Claim by Type of Injury

As shown in the following chart, there have been significant increases in average cost per claim for several types of injuries. From 1997 to 2003, slips and falls increased by 61 percent, back injuries by 59 percent, followed by carpal tunnel/repetitive motion injuries (RMI) by 56 percent. On the other hand, average costs of psychiatric and mental stress claims appeared to have levelled off until 2001, then increased slightly in 2002, and have been pretty stable since then. From 2003-2004, the average cost for some types of injuries such as back injuries and carpal tunnel/RMI have increased only slightly and appeared to be leveling off.



* These categories are not mutually exclusive. For example, some back injuries result from slips and falls.

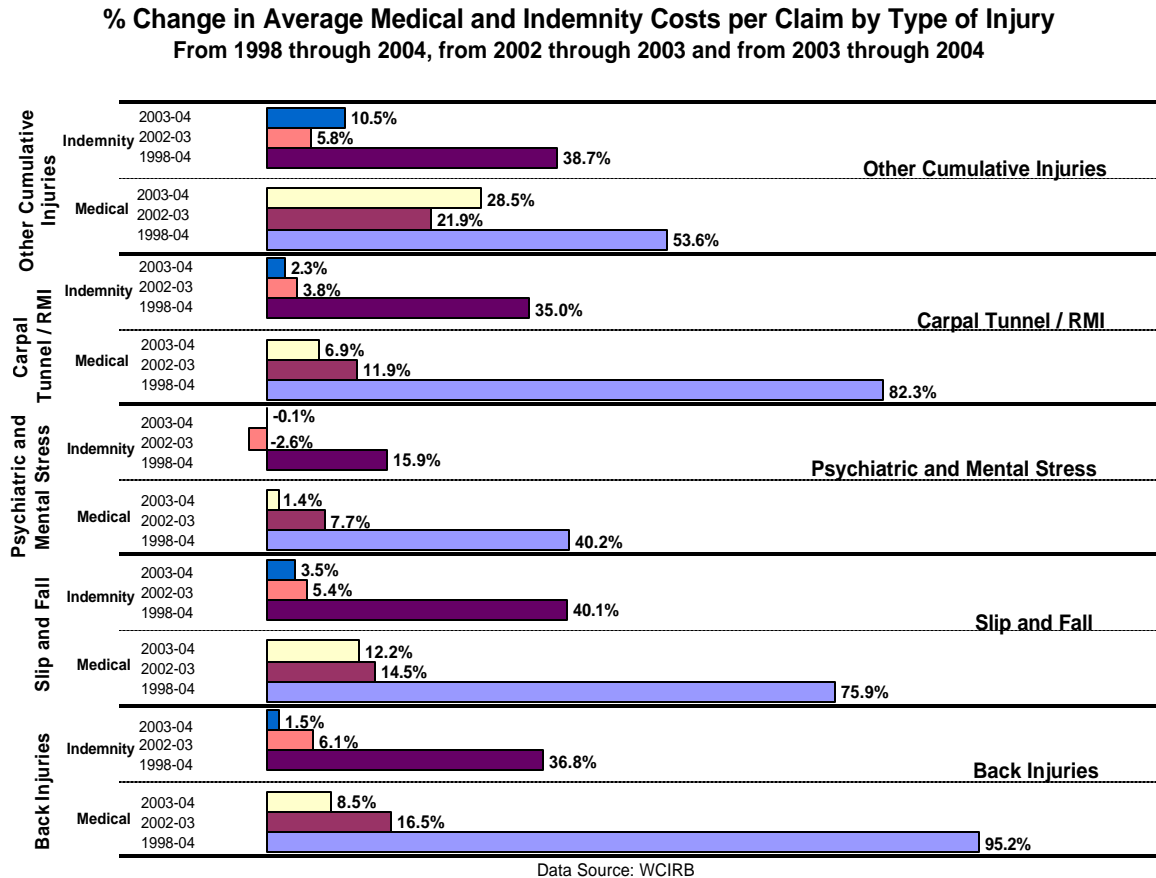
Source: WCIRB

Please note that the average costs are evaluated at 18 months after inception, so costs in 2004 are for policy-year 2002 cases, per WCIRB Annual Report on Losses and Expenses. Similarly, 2003 costs are for policy-year 2001 cases, and so on.

SYSTEMS OVERVIEW

Changes in Average Medical and Indemnity Costs per Claim by Type of Injury

Although the average claims costs for different types of injuries have been increasing, the growth of average costs for some types of injuries has been leveling off. In addition, the growth in both indemnity and medical costs has begun to decline recently for most injury types. As shown in the graph below, for example, in 2002-2003, the growth in average medical costs for back injuries was 16.5 percent and in 2003-2004, it was 8.5 percent.



Please note that the average costs are evaluated at 18 months after inception, so costs in 2004 are for policy-year 2002 cases, per WCIRB Annual Report on Losses and Expenses. Similarly, 2003 costs are for policy-year 2001 cases, and so on.

SPECIAL REPORT: DWC REGULATORY ACTIONS

This section describes the regulatory activities of the Division of Workers' Compensation to implement the provisions of the recent workers' compensation reform legislation.

PLEASE NOTE:

This report provides the overview and status of DWC regulations activity as of October 2005. The latest updates are available at www.dir.ca.gov/DWC/DWCrulemaking.html

Assembly Bill 749

Labor Code §	AB 749 Original Mandate/Tasks	Current Status (October 2005)
127.6	Medical Study DWC Administrative Director (AD), in consultation with CHSWC and other state agencies, to conduct a study of medical treatment provided to injured workers. Study to begin by July 1, 2003, report and recommendations by July 1, 2004.	The contract was awarded to the RAND Corporation. The bulk of the work has been completed, including recommendations for the medical treatment utilization schedule.
138.4	Benefit Notices to Employees from Claims Administrators Regulations need to be revised to reflect changes in this statute.	An advisory committee meeting was held on January 18, 2005, to discuss changes to the benefit notice regulations. A draft of regulations was distributed and comments are being reviewed. A revised draft of regulations will be circulated in November 2005 for public comment prior to formal rulemaking.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	AB 749 Original Mandate/Tasks	Current Status (October 2005)
139.47	Return to Work Department of Industrial Relations (DIR) Director to establish a program to encourage early and sustained return to work, including creation of educational materials.	Initial meetings with the public were held in April and July 2002. Reimbursement program for injuries after July 1, 2004, is subject to funding from \$5814.6 penalties or funds transferred from the Workers' Compensation Administration Revolving Fund (WCARF) by the AD in accordance with rules to be adopted. [Senate Bill (SB) 899.]
139.48 139.49	Return-to-work Reimbursement Program / Study	An advisory committee meeting was held on March 28, 2005, and draft regulations were distributed to the public and posted on the DWC Forum website. Revised draft was circulated to advisory committee with comment period closing on July 14, 2005. The rulemaking package was submitted to the Office of Administrative Law (OAL) and a public hearing is scheduled for December 15, 2005.
3201.5 3201.7 3201.9	Carve Out AD to collect data regarding collectively bargained carve-out programs. By June 30, 2004, and annually thereafter, AD to report claim statistics to Legislature; by July 1, 2004, and annually, AD to report number of collective bargaining agreements (CBAs) and number of employees covered to DIR Director.	Completed. Effective October 4, 2004.
3550 3551	Posting Notices AD to prescribe the form and content of workers' compensation notices required to be posted by employers "in a conspicuous location frequented by employees"; notice must be available in Spanish. Time of Hire Pamphlet	Completed. Effective August 1, 2004.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	AB 749 Original Mandate/Tasks	Current Status (October 2005)
3822	Fraud Notice (Annual to every employer (ER), claims adjuster, third-party administrator (TPA), physician and attorney participating in Workers' Compensation)	Completed for 2005.
4062.9	Develop and Revise Educational Materials for Primary Treating Physicians and Chiropractors	University of California San Francisco (UCSF) has completed a scope of work and a contract proposal to update the Physician's Guide to Workers' Compensation, which will include a section for treating physicians plus information on writing reports. The contract is pending at the Department of General Services (DGS) for final approval. The work will begin immediately and should be completed in approximately six months.
4600.2	Pharmacy Contract Standards	Contracted with UCSF Pharmacy School to provide study and recommendations for contract standards. Report received at the end of March 2004. Rulemaking will commence in 2006.
4603.4	Standardized Medical Billing Forms and Electronic Billing	Pre-rulemaking advisory committee meetings have been held in June, July, August and October 2004 and several dates in 2005. Notice of Rulemaking will be issued in fall or winter of 2005.
5401	Claim Form and Notice of Potential Eligibility for Benefits	Completed. Effective August 1, 2004.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Assembly Bill 227 and Senate Bill 228 - Official Medical Fee Schedule

Labor Code §	AB 227 & SB 228 Official Medical Fee Schedule Mandate/Tasks	Current Status (October 2005)
5307.1	<p>Physician Fee Schedule</p> <p>Provides that the existing Official Medical Fee Schedule (OMFS) for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5 percent.</p> <p>As of January 1, 2006, the AD will have the authority to adopt an OMFS for physician services.</p>	<p>Emergency regulation adopted effective January 2, 2004, to implement physician schedule that is to remain in place for calendar years 2004 and 2005.</p> <p>Effective date of permanent regulation is July 1, 2004.</p> <p>Clean-up regulation on Table A physician fees adopted as emergency effective for services on or after January 14, 2005.</p> <p>Regulation on Table A physician fees to ensure fees do not fall below Medicare adopted as emergency on May 14, 2005.</p> <p>Public hearing on both emergency Table A held on August 1, 2005. Approved by OAL and submitted to the Secretary of State on September 29, 2005.</p> <p>Analyzing options for 2006 adoption of a new physician fee schedule and options for contracting an impact study.</p>
5307.1	<p>Inpatient Facility Fee Schedule</p> <p>AD to adopt an inpatient facility fee schedule for inpatient hospital care based on the Medicare fee plus 20 percent.</p>	<p>Emergency regulations adopted effective January 2, 2004.</p> <p>Effective date of permanent regulations is July 1, 2004.</p> <p>Order issued October 13, 2004, to update the Inpatient Hospital Fee Schedule effective for discharges on or after November 29, 2004, to conform to Medicare rate changes.</p> <p>Update to diagnostic-related groups (DRGs) and update to composite factors due to wage index changes adopted by Order effective July 15, 2005.</p>

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	AB 227 & SB 228 Official Medical Fee Schedule Mandate/Tasks	Current Status (October 2005)
5307.1	Outpatient Facility Fee Schedule AD to adopt a new fee schedule for hospital outpatient departments and ambulatory surgery centers based on the Medicare fee for hospital outpatient departments plus 20 percent.	Emergency regulation adopted effective January 2, 2004. Effective date of permanent regulations is July 1, 2004. Update to Outpatient Fee Schedule to conform to Medicare 2005 changes adopted by Order effective July 15, 2005.
5307.1	Pharmacy Fee Schedule AD to adopt a new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.	Medi-Cal rates have been posted on the DIR website to implement provisions that rates are 100 percent of fees prescribed in Medi-Cal effective January 1, 2004. Regulations will be adopted in 2005 or early 2006 for repackaged drugs.
5307.1	Official Medical Fee Schedule shall Be Adjusted To Conform To Relevant Medicare/Medi-Cal Changes within 60 Days Of Changes (except specified inpatient changes)	Statutes specify that changes can be implemented without regulations. Update Orders issued as follows: Inpatient – for discharges on or after November 29, 2004. Inpatient – for services on or after July 15, 2005. Outpatient – for services on or after July 15, 2005.
5307.1	Specified Schedules Not In Fee Schedule Until January 1, 2005 (Skilled Nursing Facility, home health agency, inpatient for hospitals exempt from Medicare Prospective Payment System, outpatient renal dialysis)	DWC has contract with RAND to provide technical assistance on the new fee schedules. Expect to move forward in the latter part of 2005. In process of prioritizing the work.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	AB 227 & SB 228 Official Medical Fee Schedule Mandate/Tasks	Current Status (October 2005)
5307.1	Miscellaneous Medicare Fee Schedules	<p>Adopted emergency regulations effective January 2, 2004, incorporating Medicare's Ambulance, Laboratory and Pathology, and Durable Medical Equipment Prosthetics Orthotics Supplies (DMEPOS) fee schedules. Permanent regulations became effective July 1, 2004.</p> <p>Medicare update Orders will be issued on Laboratory and Pathology, and DMEPOS. Ambulance update rulemaking will be initiated.</p>

Other Mandates of Assembly Bill 227 and Senate Bill 228

Labor Code §	AB 227 & SB 228 Other Mandates/Tasks	Current Status (October 2005)
4903.5	Medical Provider Lien Filing Fee	<p>Completed.</p> <p>Effective June 30, 2004.</p>
Section 4658.5 of AB 227	Supplemental Job Displacement Benefit	<p>Completed.</p> <p>Effective August 1, 2005.</p>
3201.7	Carve-out Program For All Industries	<p>Completed.</p> <p>Effective October 4, 2004.</p>
4062(b)	Spinal Surgery Second-Opinion Process Procedure	<p>Completed.</p> <p>Effective December 15, 2004.</p>
Section 139.5 of AB 227	Vocational Rehabilitation Repeal for Injuries On/After January 1, 2004	<p>Completed.</p> <p>Effective August 1, 2004.</p>

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	AB 227 & SB 228 Other Mandates/Tasks	Current Status (October 2005)
4603.4	Electronic Bill Payment Regulations required to be adopted by January 1, 2005, and to mandate acceptance of electronic bills by January 1, 2006.	Pre-Rulemaking advisory committee meetings held in June, July, August and October 2004 and several dates in 2005. Notice of Rulemaking will be initiated in fall or winter of 2005.
4610	Utilization Review	Emergency regulations became effective December 13, 2004. The emergency regulations have been readopted on an emergency basis, effective April 12, 2005. The public hearing on the permanent adoption of the regulations was held on March 22, 2005. The completed rulemaking file was approved by OAL and filed with the Secretary of State on September 22, 2005.
5318	Spinal Surgery Implantables / Hardware Reimbursement Statute codified old regulation providing extra payment for hardware/implantables until AD adopts reimbursement regulation	Seeking assistance from RAND to develop possible approaches to refine reimbursement methodology.
5307.27	Medical Treatment Utilization Schedule	CHSWC delivered the report and recommendation to the AD on November 15, 2004. An advisory committee meeting was held on March 16, 2005, and a proposed draft of regulations was distributed. Revised proposal was distributed to advisory committee and posted on the DWC Forum website with comment period closing July 8, 2005. Comments are being reviewed. Notice of rulemaking was approved by OAL and submitted to the Secretary of State on September 22, 2005.
	Changes Without Regulatory Effect	Preparation of various Rule 100 changes without regulatory effect to conform regulations to statutory changes are underway for filing with OAL in 2005.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Senate Bill 899

Labor Code §	SB 899 Mandates/Tasks	Effective Date	Regulation Deadline	Current Status (October 2005)
139.48	Return-to-work Reimbursement Program for Workplace Modifications	For injuries on or after July 1, 2004. Sunsets January 1, 2009.	No Date Specified.	Reimbursement program for injuries after July 1, 2004, is subject to funding from \$5814.6 penalties or funds transferred from the WCARF by the AD in accordance with rules to be adopted. An advisory committee meeting was held on March 28, 2005, and draft regulations were distributed to the public and posted on the DWC Forum website. Revised draft was circulated to advisory committee with comment period closing on July 14, 2005. Comments are being reviewed. The Notice of Rulemaking will be submitted to OAL in September 2005.
4062.1	Qualified Medical Evaluator Procedures for Unrepresented Workers	April 19, 2004.	No Date Specified.	Draft regulations are being developed. Rulemaking process to begin shortly.
4062.2	Qualified Medical Evaluator Procedures for Represented Injured Workers	For injuries on or after July 1, 2005.	No Date Specified.	Draft regulations are being developed. Rulemaking process to begin shortly.
4600	Pre-Designation of Physician	April 19, 2004. Sunsets April 30, 2007.	No Date Specified.	An advisory committee meeting was held on March 28, 2005, and a draft of regulations was distributed and posted on the DWC Forum website for public comment. Revised draft was circulated to advisory committee with comment period closing on July 14, 2005. Comments are being reviewed. Notice of Rulemaking was submitted to OAL on September 22, 2005.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	SB 899 Mandates/Tasks	Effective Date	Regulation Deadline	Current Status (October 2005)
4616	Medical Provider Networks	January 1, 2005.	November 1, 2004.	Emergency regulations were adopted effective November 1, 2004. The regulations were readopted on an emergency basis effective March 1, 2005. Public hearing was held on the permanent adoption of regulations on February 2, 2005. A third modified proposal for 15-day comment was issued with comment closing on July 13, 2005. Completed rulemaking package submitted to OAL on July 29, 2005. Regulations approved by OAL and filed with the Secretary of State on September 9, 2005. Regulations effective September 15, 2005.
4616.4	Independent Medical Review	January 1, 2005.	No Date Specified.	Completed. Effective June 10, 2005.
4658, 4658.1	Offer of Regular, Modified, or Alternate Work in relation to a 15 percent increase or decrease of permanent disability indemnity	For injuries on or after effective date of revised Permanent Disability Rating Schedule (PDRS) and effective for all dates of injury if no report issued indicating PD, and if no 4061 notice required.	No Date Specified.	An advisory committee meeting was held on March 28, 2005, and a draft of regulations was distributed and posted on the DWC Forum website for public comment. Revised draft was circulated to advisory committee with comment period closing on July 14, 2005. Comments are being reviewed. Public hearing scheduled for December 15, 2005.
4660	Permanent Disability Rating Schedule Revision	For all dates of injury if no report issued indicating PD and if no 4061 notice required.	July 1, 2005.	Completed. Emergency regulations effective January 1, 2005. Permanent regulations effective June 10, 2005.

SPECIAL REPORT: DWC REGULATORY ACTIONS

Labor Code §	SB 899 Mandates/Tasks	Effective Date	Regulation Deadline	Current Status (October 2005)
5814.6	Penalty for Business Practice of Unreasonable Delay in Payment of Compensation	Operative June 1, 2004.	No Date Specified.	Draft regulations were posted to the DWC Forum website for pre-rulemaking public comment period. Advisory group meeting was held on January 18, 2005, to gather public input on drafting regulations. A revised draft of regulations was posted on the DWC Forum with a comment period ending June 14, 2005. The comments are being reviewed and a revised draft is being prepared.

Other Regulations

Labor Code §	Other Mandates/Tasks	Current Status (October 2005)
138.6	Workers' Compensation Information System Implementation of the Workers' Compensation Information System (WCIS) mandated medical treatment and payment data collection.	A draft California implementation guide and proposed regulations have been completed following numerous advisory and task force meetings to formulate California-specific needs using national workers' compensation data-collection standards. A public hearing on the proposed regulations is scheduled for November 22, 2005..

SPECIAL REPORT: REVIEW OF PERMANENT DISABILITY RATING SCHEDULE

Introduction

When workers suffer a permanently disabling injury at the workplace, they are usually eligible to receive workers' compensation permanent partial disability (PPD) benefits. In California and other states, more-severely disabled workers are entitled to higher benefits than less-severely disabled workers. This characteristic of PPD benefits necessitates a system for ranking the severity of various disabilities. This ranking, called the "permanent disability rating," is used to distribute PPD benefits to workers with various types of impairments. In California, injured workers with higher disability ratings are entitled to more benefits than those with lower ratings.

The disability rating process sparks controversy in every state, but nowhere has it been more controversial than in California. California has historically relied on its own system for measuring disability, a system that has been criticized by many observers as being inconsistent, prone to promote disputes, and conducive to fraud.

CHSWC has conducted a landmark series of studies about permanent disability in California that has informed policymakers and the public. Subsequently, legislative modifications to workers' compensation system, including permanent disability, were adopted.

On January 1, 2005, a new permanent disability rating schedule (PDRS) was adopted pursuant to Senate Bill (SB) 899. The effects of the new schedule are becoming clearer as a result of ongoing experience and research.

Labor Code Section 4660 directs the Administrative Director (AD) to promulgate a PDRS. The section was amended by SB 899 to address two problems with the old schedule. One problem was the inequity among ratings for different types of disabilities. The other problem was the unpredictability and subjectivity of individual disability evaluations. The Legislature addressed the inequities among injuries by directing the AD to consider a specific study on this topic and additional empirical studies. The Legislature addressed the subjectivity of individual evaluations by specifying that the medical evaluations shall be based on American Medical Association (AMA) Guides. The AD had less than eight months to determine how to implement these legislative mandates before the new schedule was due on January 1, 2005.

Research has been done and further research is underway which will help to quantify the effects of the 2005 PDRS. The same research may inform future decisions about revisions to the schedule to fulfill the policy objectives of the PDRS.

Background

Before SB-899, the California permanent disability rating system attempted to produce a measure of disability that combined both severity of an impairment and the effect of the impairment on work. The disability ratings were based on a variety of objective and subjective

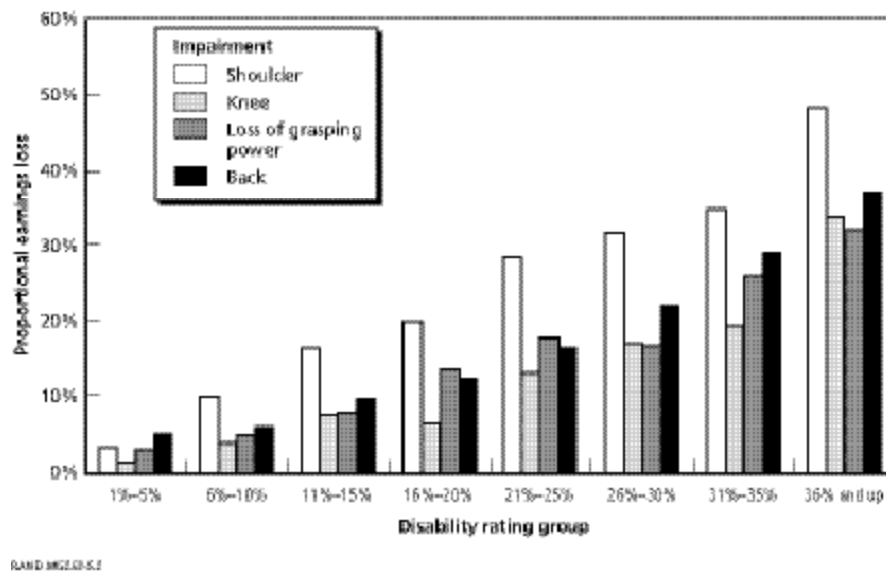
criteria. The reliance on subjective criteria to measure disability was the most controversial feature of the California system and what most distinguished it from the systems used in other states. Supporters of the system contended that California's unique approach to compensating disabilities better targeted benefits to workers, and that some disabilities, while real, cannot be objectively measured using medical criteria. Critics of the system countered that the use of these criteria led to excessive PPD claiming and an inappropriate distribution of benefits.

Findings from the CHSWC-RAND Study of the PDRS

In its evaluation of the California system, RAND found that:

- The rating system appeared to function reasonably well in that the highest ratings (and therefore the most benefits) went to the most severely impaired individuals.
- The system targeted disability benefits appropriately to more-severe impairments on average within a given body part. However, the ratings (and therefore benefits) were not distributed equitably for impairments to different parts of the body. For example, a worker with a shoulder disability that was rated with the same severity as another worker's disabling back injury nevertheless suffered a higher earnings loss on average. The use of wage losses to evaluate impairment severity provides a common standard of comparison across impairment types, and could reduce these inequities.
- At every level of injury severity, workers who return to work at the same employer even for a short period of time experience much lower proportional earnings losses over the long term than those who do not.
- There were large differences in evaluations by different physicians examining the same impairment (especially in southern California), and these inconsistencies in physician ratings appeared substantial enough to provide parties with incentives to litigate. However, it is not clear to what extent the discrepancies reflect use of subjective factors in the old rating system, before the reforms adopted with SB-899, or other factors such as workers' ability to select sympathetic physicians.

Three-Year Losses by Disability Rating Category by Injury Type



The SB-899 Reforms Implement Substantial System Changes

AMA Guides

The new approach to rating permanent disability in California abandons the old rating schedule and adopts the “objective” criteria used by the *AMA Guides to the Evaluation of Permanent Impairment* (American Medical Association, 2000). While the *AMA Guides* are not uncontroversial, and have problems of their own, proponents of the new system hope that the adoption of the *AMA Guides* will increase the system’s reliance on objective medical evidence of disability, reduce costly litigation, and increase confidence that the system is performing fairly and efficiently. In addition, SB-899 called for the new system to incorporate empirical data on the long-term loss of income by workers with injuries to different parts of the body.

Two-Tier PD Benefits

While California’s disability rating system incorporated a number of important factors that might indicate an individual’s earnings capacity, one factor that it did not previously consider in rating a disability was the observed return to work by an individual. Other states use two-tier benefit systems to factor in return to work when assigning PPD benefits. Two-tier systems, which provide relatively lower benefits to workers who receive a legitimate employment offer from the at-injury employer and higher benefits to those who do not, have the potential to boost labor market participation for disabled workers by providing both employers and workers with incentives to offer and accept, respectively, modified employment opportunities at the at-injury employer. SB 899 adopted a two-tier system for California, which provides a 30 percent difference in PPD benefits based on whether or not disabled workers are offered a suitable employment opportunity at the at-injury employer.

The 2005 Permanent Disability Rating Schedule

The AD promulgated the 2005 PDRS as an emergency regulation effective January 1, 2005. The regulation became permanent in June 2005 with only minor changes. In the 2005 PDRS, the AMA impairment percentage is multiplied by a future earning capacity (FEC) factor. The product of that multiplication is used in the calculation of an employee's PD rating where a "standard" disability rating was used under the pre-2005 schedule. The FEC factor serves two purposes: it scales up the AMA impairment percentages in an effort to ameliorate the reductions otherwise prevalent in AMA ratings, and it assigns different multipliers to different types of injuries in an effort to apply the RAND findings.

SPECIAL REPORT: RETURN TO WORK

Introduction

Senate Bill (SB) 899, passed by the Legislature and signed by Governor Arnold Schwarzenegger, contained several provisions within Labor Code Sections 4658 and 139.48, relating to improving return-to-work (RTW) rates in California.

Republican Assembly Member Keene and Democratic Assembly Member Vargas urged the Commission on Health and Safety and Workers' Compensation (CHSWC) to evaluate RTW efforts in California in light of the changes caused by current legislation.

Improved RTW could benefit employers through a number of mechanisms: by reducing the temporary disability (TD) and permanent disability (PD) payments; by reducing the indirect costs such as hiring and training; and by decreasing the potential for litigation. If the reforms were successful in improving RTW, they could lower workers' wage losses associated with TD and PD. This makes assessing the effectiveness of recent reform efforts to improve the RTW of injured workers a necessary step in evaluating the impact of the reforms on injured workers and employers in California.

In response to this, at the November 15, 2004 Commission meeting, CHSWC voted to conduct a study and issue a Request for Proposal (RFP) on RTW. The RFP was issued on May 16, 2005.

Background

RTW at the earliest appropriate time reduces the long-term wage loss of an injured worker. In addition, return to sustained employment may minimize some of the costs borne by employers.

Work Injuries and Illnesses

Currently, there are approximately 700,000 non-fatal work-related injuries and illnesses and approximately 460 work-related fatalities per year in California. California's most recent work injury and illness statistics in 2003 indicate an injury and illness rate of 5.0 cases per 100 full-time employees in the private sector. This is a 47 percent decline from the 1990 peak level of 9.4.²

Costs

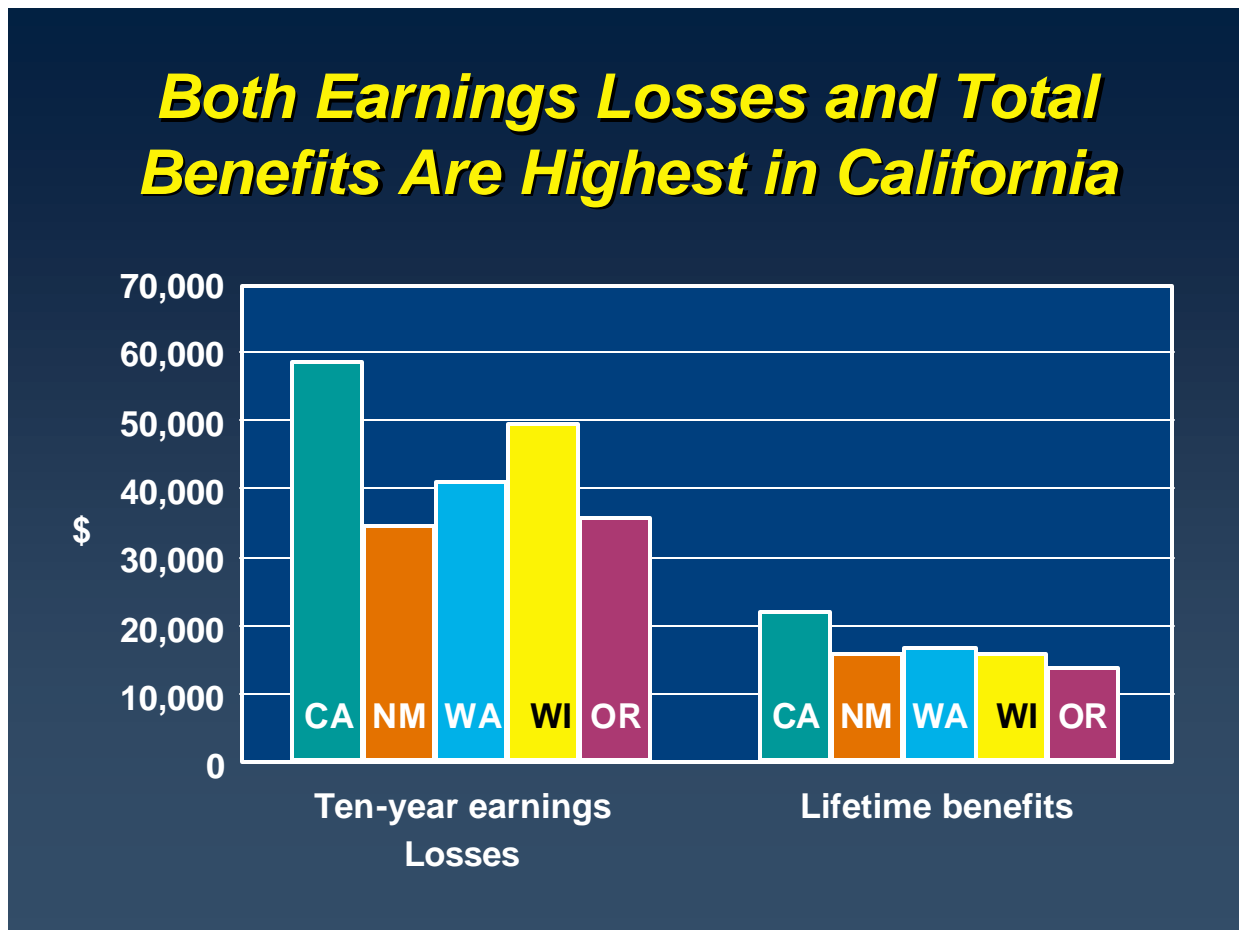
Despite the decline in work-related injuries and illnesses, workers' compensation costs in California have skyrocketed. The total paid costs of the workers' compensation system for

² California Division of Labor Statistics and Research and US Dept. of Labor, Bureau of Labor Statistics.

insured and self-insured have increased 200 percent from \$8.3 billion in 1997 to \$24.9 billion in 2004.³

In addition, the total workers' compensation costs paid by insurers and self-insureds for medical expenses grew rapidly, increasing 119 percent from 1997 to 2004.⁴ Written premium for insured employers was over \$23 billion in 2004, a 260 percent increase from 6.4 billion in 1997.⁵

California costs for workers' compensation are high as compared with other states. The CHSWC Study by RAND, "Earnings Losses and Compensation for Permanent Disability in California and Four Other States," indicates that when compared to other states, California had the highest average permanent partial disability (PPD) benefits paid.



Source: CHSWC Study of Permanent Disability by RAND

³ The workers' compensation costs indicated above include administrative expenses and adjustments to reserves. WCIRB Annual Report on Losses and Expenses on Calendar Year 1997. WCIRB Annual Report on Losses and Expenses for Calendar Year 2003.

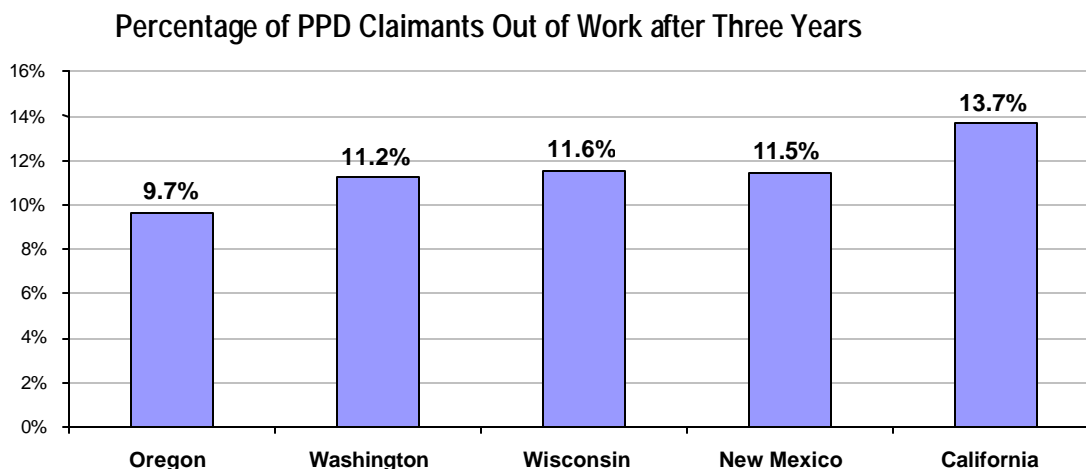
⁴ Ibid.

⁵ Workers' Compensation Insurance Rating Bureau. The premium figures indicated are prior to the application of deductible credits.

Outcomes

The higher costs paid by California employers do not necessarily result in better outcomes for California's injured workers, according to research by RAND (Reville et al., 2002). That study found that while average benefits paid for PPD were highest in California, California injured workers are far more likely to be out of work after their injury, and in the long run, the benefits could not compensate the resulting lower earnings. Specifically, Californians with PPD claims lose more than 25 percent of their earnings from employment over the ten years after injury. In contrast, workers in Washington and Oregon lose less than 20 percent. These results are driven by poor RTW in California compared with the other states.”⁶

In addition, as seen in the chart below, CHSWC's study comparing RTW rates of PPD claimants in five states showed that California has the highest percentage of PPD claimants out of work three years after injury.



Source: CHSWC STUDY of Permanent Disability (PD) by RAND

CHSWC Research on Return to Work

Several CHSWC studies on RTW found that:

- Permanently disabled workers who return to work at the same employer have reduced levels of uncompensated wage loss over a five-year period when compared to those who do not return to work at the at-injury employer.
- Better RTW at self-insured firms led to a lower proportion of earnings lost by PPD claimants. During the five years after injury, self-insured claimants lost a total of 23 percent of both pre- and post-tax earnings, compared to the insured claimants' proportional losses of about 32 percent.

⁶ Reville, Robert T., Seth Seabury, and Frank Neuhauser. "Evaluation of California's Permanent Disability Rating Schedule. Interim Report." CSHWC Study by RAND. December 2003.

SPECIAL REPORT: RETURN TO WORK

- Injured workers have greater success at rehabilitation when they return to alternate or modified work with the same employer.
- A survey of RTW practices of private self-insured employers conducted by RAND found that worker participation in a formal RTW program decreases a worker's wage loss on average by \$1,500 in the year after injury.

Based on the research, the Study recommendations included that California could consider moving to a two-tier benefits system, such as the one in Oregon, which pays higher benefits to people who have not been offered jobs at all or suitable jobs with the pre-injury employer.

Return-to-Work Legislative Change

CHSWC's studies on RTW supported SB 899. Several provisions of SB 899 within Labor Code Sections 4658 and 139.48 relate to improving RTW rates in California.

Return-to-Work Adjustment -- Tiered PD Benefit -- Labor Code Section 4658

Tiered PD benefit system provides for 15 percent increase or decrease in the weekly PD rate depending on whether or not the employer offers RTW.

If terminated before PD is all paid, the remaining weeks of the PD benefit from the time of termination are increased 15 percent above the base rate.

The 15 percent adjustment (increase or decrease) does not apply to employers with less than 50 employees.

Amendments apply to injuries occurring on or after the date of the revised PD schedule (Section 4658(d)(1)), effective January 1, 2005, per Labor Code Section 4660.

The definition of modified or alternate work requires at least 85 percent of time-of-injury earnings and a location at a reasonable commute distance from the employee's residence.⁷

Return-to-Work Reimbursements for Worksite Modifications

Labor Code Section 139.48 provides that:

- The RTW program shall be implemented to the extent funds are available. [Its funding source is from Section 5814.6 penalties and from transfers by the AD from the Workers' Compensation Administration Revolving Fund (WCARF) per Section 62.5.]
- The program will reimburse up to \$1,250 of expenses to accommodate a temporarily disabled worker or \$2,500 to accommodate a permanently disabled worker.

⁷ This definition of modified work applies for the purpose of the RTW adjustment section (Labor Code Section 4658). This is different from the definition used for the Supplemental Job Displacement Benefit (SJDB) where modified work apparently means 100 percent of pre-injury wages.

SPECIAL REPORT: RETURN TO WORK

- Eligible employers⁸ with 50 or fewer full-time employees are eligible for reimbursements from the program.

Recent Vocational Rehabilitation Reforms

The change in Assembly Bill (AB) 749 to the vocational rehabilitation program permitted employees to settle their entitlement to vocational rehabilitation benefits for up to \$10,000. However, AB 227 provides the following:

- New Labor Code Section 139.5 repeals workers' compensation vocational rehabilitation.
- Employees with dates of injury prior to January 1, 2004, shall be entitled to continuing services until they are concluded, but such services shall not be provided to employees with a date of injury on and after January 1, 2004 (Labor Code Section 139.5).

New Supplemental Job Displacement Benefit

- New Labor Code Section 4658.5, created by AB 227, establishes a new supplemental job displacement benefit (SJDB) with savings from the repeal of vocational rehabilitation.
- Labor Code Section 4658.5 provides that employees who do not return to work for their employer within 60 days of the end of the TD period will receive a voucher of:
 - \$4,000 for PPD of less than 15 percent;
 - \$6,000 for PPD between 15 percent and 25 percent;
 - \$8,000 for PPD between 26 percent and 49 percent; and
 - \$10,000 for PPD between 50 percent and 99 percent.
- The voucher must be used at state-approved or accredited schools for education-related retraining or skill-enhancement, or both. Up to 10 percent of SJDB can be used for counseling. [Labor Code Section 4658.5]
- The AD shall issue regulations governing the form of payment and other matters related to the proper administration of the benefit. [Labor Code Section 4658.5]
- Within 10 days of the last payment of TD, the employer must give notice to the injured worker of availability of the benefit. [Labor Code Section 4658.5]
- The employer will not be liable for the SJDB if, within 30 days of the end of TD, it offers modified or alternative work and the employee rejects or fails to accept the offer. [Labor Code Section 4658.5]

⁸ "Eligible employers" means any employer, except the State or an employer eligible to secure the payment of compensation pursuant to subdivision (c) of section 3700, who employs 50 or fewer full-time employees on the date of injury." The reference to 3700 (c) describes self-insured local public entities such as counties, cities, districts, etc. In essence, this means that public employers would not be eligible for the reimbursement.

Senate Bill 899 Changes Relating to Vocational Rehabilitation

SB 899 provided that vocational rehabilitation benefits are available only to eligible workers who were injured before 2004 and will be available only through December 31, 2008.

Further Research

The CHSWC study findings discussed above have supported several provisions of recent legislation, AB 227, SB 228, and SB 899. These bills included important statutory and regulatory changes meant to encourage RTW at the at-injury employer. Studying the impact of these changes is important for understanding how to construct appropriate incentives for both employers and employees. The significance of the research extends beyond California because the innovations in the recent reform legislation may offer a model for other states to follow when reforming their systems.

Thorough evaluations are critical for improving California's workers' compensation system, lowering employer costs related to TD and PD, lowering employers' indirect costs, such as hiring and training, and reducing workers' wage losses associated with TD and PD.

In response to the need for further research and analysis, CHSWC has contracted with RAND to study the impact of recent RTW and vocational rehabilitation reforms on employer costs and injured worker outcomes.

Objectives and Scope of the Study

The purpose and objectives of the RTW study are to comply with the request by Assembly Member Keene and Assembly Member Vargas to evaluate RTW efforts in California in light of the changes caused by current legislation, SB 899.

The study will include an evaluation of the current state of RTW and vocational rehabilitation or SJDB of injured workers in California, identify issues, evaluate the impact of recent legislative changes, and make recommendations for how to construct appropriate incentives for both employers and employees.

The significance of the research extends beyond California because the innovations in the recent reform legislation may offer a model for other states to follow when reforming their systems.

The study shall focus on, but not be limited to, all of the following important research questions that involve evaluation of the recent legislation on return to work:

- What has been or will be the impact of the 15 percent "bump up, bump down" on disability benefits, the subsidy program for modifications by small businesses, and the RTW voucher program (which replaced the old vocational rehabilitation benefits) on the likelihood that a permanently disabled worker returns to work at the at-injury employer? With what frequency are they applied?

SPECIAL REPORT: RETURN TO WORK

- Have the reforms led to a change in the duration of cases that we see on TD, with or without ever receiving PD benefits? If so, what are the implications for injured worker outcomes and employer costs?
- After the reforms, are there workers who remain out of work for a substantial period without receiving PPD? If so, how long do they remain on TD, and what is the likelihood that they eventually return to work? Are these workers effectively targeted by RTW programs?
- What impact have the reforms had on employer efforts to promote RTW? Have the reforms made it more cost-effective to implement a formal RTW program?
- Are there other steps that policy makers in California can and should take to improve RTW by injured workers?
- Will educational vouchers in place of vocational rehabilitation services improve worker outcomes while lowering employer costs?

Study information will be organized around five central themes:

- Evaluation of the trends in use of various programs affecting RTW.
- Evaluation of the impact of the reforms on the adoption of RTW programs by employers.
- Estimation of the impact of the reforms on the duration of work absences due to workplace disabilities.
- Review of the changes in the distribution of TD and PD benefit receipt.
- Assessment of the overall impact of these reforms on workers' compensation benefit adequacy and affordability in California.

Status

The study began in August 2005 and is expected to be completed in September 2008.

SPECIAL REPORT: RETURN TO WORK

SPECIAL REPORT: MEDICAL TREATMENT STUDY

Background

The cost of providing medical care to California workers with job injuries and illnesses has been steadily increasing in the past several years, skyrocketing in 2001 and 2002. According to the Workers' Compensation Insurance Rating Bureau (WCIRB), paid medical care expenditures accounted for over half of indemnity and medical workers' compensation costs in California in 2003. From 1995 to 2003, workers' compensation medical costs have more than doubled. The rise in medical care expenditures has been placing considerable strain on the entire workers' compensation system, prompting policy makers to consider proposals for improving the delivery of workers' compensation medical care in the state.

Key questions are: (1) why are California's workers' compensation medical costs growing so rapidly; and (2) what can be done to contain costs while ensuring appropriate access to high-quality care for those who need it?

Issues of the quality of medical care being provided to California injured workers are being raised. These issues, including the timely and convenient access to medical care, restraints on unnecessary care and understanding of medical errors in the provision of care, are all relevant to study of the medical care benefit in workers' compensation.

Labor Code Section 127.6 of Assembly Bill (AB) 749 requires "the Administrative Director, in consultation with the Commission on Health and Safety and Workers Compensation, other state agencies, and researchers and research institutions with expertise in health care delivery and occupational health care service, to conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses."

In addition, Senate Bill (SB) 228 mandates that CHSWC, on or before July 1, 2004, conduct a survey and evaluation of nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level, and in other medical benefit systems, and to issue a report of its findings and recommendations to the Administrative Director (AD) of the Division of Workers' Compensation (DWC) for purposes of the adoption of a medical treatment utilization schedule.

Description and Results of the Study

In order to meet the above requirements of AB 749 and SB 228, CHSWC and the DWC had issued a request for proposal (RFP) for a study on medical treatment protocols in December 2003. The CHSWC/DWC Medical Treatment study by RAND focused on strategies to improve the quality and efficiency of workers' compensation medical services provided to California injured workers.

The CHSWC/DWC study by RAND focused its analysis of cost containment and quality issues on five major tasks:

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- Identify the most important utilization and cost drivers and quality-related issues affecting medical care provided to California injured workers.
- Analyze best practices in quality assurance/quality improvement/cost-containment strategies for applicability in California workers' compensation.
- Evaluate utilization guidelines and make recommendations regarding adoption for the California workers' compensation program.
- Analyze issues related to refinement and expansion of Medicare-based fee schedules.
- Design a system for monitoring access, cost, and quality.

Results to Date

As part of the Medical Treatment study, CHSWC has issued three working papers prepared by RAND relating to the above areas. In addition, RAND has begun to prepare a conceptual framework for monitoring medical care. The following summarizes the findings and recommendations of each of these studies as well as areas for further research.

Evaluation of Medical Treatment Guidelines Study

A major concern of the Legislature and the key stakeholders in the workers' compensation system has been the over-utilization and excessive treatment in California compared to group health or other states' workers' compensation systems. In response to requirements of SB 228, RAND conducted a survey of existing guidelines and provided comparative analysis of guidelines using a variety of measures. The CHSWC/DWC study by RAND followed the steps below in providing an analysis of medical treatment utilization guidelines appropriate for the California workers' compensation system.

Findings

The CHSWC/DWC study by RAND findings included the following:

- The American College of Occupational and Environmental Medicine (ACOEM) guidelines performed well on three of four surgical topics, and the American Association of Orthopedic Surgeons (AAOS) guidelines performed better on spinal surgery.
- None of the guidelines performed well on non-surgical topics.
- The technical evaluation portion of the study revealed that ACOEM and AAOS developers did a poor job of considering implementation issues.
- Stakeholder interviews indicated that payors are applying the ACOEM guidelines in an inconsistent fashion.

The CHSWC/DWC study by RAND offered short-, intermediate-, and long-term recommendations. The main recommendation is that the AD should adopt the ACOEM guidelines supplemented by the AAOS guidelines for lumbar spinal fusion surgeries. The study also recommended that the State develop a consistent set of utilization criteria to be used by all payors.

CHSWC Studies by RAND in the Medical Fee Schedule Area

As part of the medical treatment study, RAND has examined and prepared working papers for CHSWC and DWC on special topics relating to the medical fee schedule.

Payments for Workers' Compensation Spinal Surgery Discharges

The 2003 CHSWC report by RAND examined Official Medical Fee Schedule (OMFS) payments for workers' compensation spinal surgery discharges from acute care hospitals.

The report addressed several questions that the AD may wish to consider in developing a fee schedule policy for hardware and instrumentation:

- How do the costs of workers' compensation patients compare to the costs of Medicare patients?
- How do OMFS allowances for spinal surgery DRGs compare to the estimated costs of caring for injured workers before consideration of the pass-through amounts? How are payment-to-cost ratios affected by the use of hardware and instrumentation?
- How does the usage of hardware and instrumentation compare for the Medicare and workers' compensation populations? or across hospitals for workers' compensation patients?

The underlying assumption of the study was that if the estimated costs for workers' compensation spinal surgery patients are less than 120 percent of the costs for Medicare patients, the OMFS payments for spinal surgery discharges should be sufficient without the separate payment for hardware and instrumentation.

Findings of the study include that on average, workers' compensation patients are less costly than Medicare patients and have a shorter length of stay. The report therefore concluded that the OMFS allowances were resulting in payment for hardware and instrumentation twice, once in the standard DRG payment and again in the separate payment. The report further points out that payment for hardware and instrumentation provides incentives for appropriate utilization of these products during spinal surgery and on administrative data. Further, the report concluded that the standard allowance should be sufficient and that a separate payment was unnecessary.⁹ Therefore, a separate fee schedule for the individual products that would be eligible for special payment would improve payment accuracy and would also add the administrative burden of maintaining the fee schedule and pricing the claims.

Repackaged Drug Study

Two areas that have been examined by RAND are repackaged drugs and burn diagnostic-related groups (DRGs).

The current OMFS for pharmaceuticals became effective in January 1, 2004, pursuant to SB 228. The pharmaceutical fee schedule is based on 100 percent of Medi-Cal reimbursement rates. However, the Medi-Cal fee database does not include repackaged drugs; therefore,

⁹ Barbara O. Wynn, Adopting Medicare Fee Schedules: Considerations for the California Workers' Compensation Program, Santa Monica, CA: RAND, MR-1776-ICJ, 2003.

higher pricing policies under the prior OMFS continue to apply until the AD of the DWC issues a fee schedule amount for them.

The CHSWC study by RAND compared the OMFS maximum allowable fees for high-volume drugs dispensed by pharmacies and by physician offices and discussed options that may be considered in establishing a fee schedule amount for repackaged drugs. These drugs have been purchased in bulk and repackaged into individual prescription sizes for dispensing in physicians' offices.

Findings

According to the RAND study prepared for CHSWC and DWC:

- Payments for repackaged drugs dispensed by physicians based on the pre-existing OMFS schedule are higher than the pharmacy-dispensed drugs which are reimbursed according to the Medi-Cal formula.
- The OMFS fee schedule formula that applies to repackaged drugs was designed to encourage dispensing of generic drugs and reflected the assumption that the Average Wholesale Price (AWP) for generic drugs was significantly lower than the brand name equivalent. However, the AWP prices reported by the repackagers do not appear to be related to their own acquisition costs, and the differential between the brand name and generic AWP for repackaged drugs is less than expected.
- The dispensing fee of the repackagers is unnecessary and could create inappropriate financial incentives for prescribing patterns. The dispensing fee is intended for pharmacist consultation, and the physician is generally reimbursed for evaluation and management services.

Recommendations

The repackaged drug study prepared by RAND for CHSWC and DWC recommends that the following options to be considered in establishing a fee schedule amount for repackaged drugs:

- Use the Medi-Cal fee schedule payment amounts for pharmacy-dispensed drugs to reimburse repackaged drugs dispensed by physicians.
- Eliminate the dispensing fee,
- Establish a premium for physician-dispensed drugs in place of the dispensing fee.

Further Research

The CHSWC study by RAND on payment of repackaged drugs examined price differentials of repackaged drugs versus pharmacy-dispensed drugs. However, the cost implications of repackaged drugs are also a function of utilization and outcomes.

On April 28, 2005, CHSWC voted to engage in a study of the impact of repackaged drugs on workers' compensation costs. This study proposes to build on the CHSWC study by RAND and analyze several issues raised by the repackaged drug study. Some questions that will be explored are:

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- The extent to which repackaged drugs are provided to injured workers and the impact on prescription drug costs.
- Whether there are differences in prescribing practices of repackagers.
- Whether repackaged drugs improve outcomes,
- The potential savings from alternative fee schedule policies, such as applying Medicare Maximum Allowable Ingredient Cost (MAIC) and Federal Upper Limit (FAC) pricing rules that could appropriately price these repackaged drugs if regulatory or statutory changes were introduced.

This study is planned as a joint effort involving CHSWC, University of California Berkeley, California Workers' Compensation Institute (CWCI) and RAND.

Payments for Burn Cases under Workers' Compensation Medical Fee Schedule

Until January 1, 2004, burn cases were exempt from the OMFS hospital inpatient fee schedule. SB 228 ended the exemption of burn DRGs from the OMFS and placed reimbursement of burn cases under the Inpatient Hospital Fee Schedule, which is linked to Medicare. The fees for burn cases, currently paid at 1.2 times the Medicare fee schedule, raised concern with some members of the workers' compensation community. In response to these concerns, the CHSWC study by RAND examined the adequacy of the OMFS payment structure for burn DRGs.

The study focused on analyzing the following questions:

- How do the costs of workers' compensation patients compare to costs for Medicare patients?
- What is the relationship between the OMFS payments and the estimated costs of providing care to injured workers?

Findings

The findings of the study include the following:

- Workers' compensation burn cases are less costly on average than Medicare patients in six of the eight DRGs and have shorter lengths of stay.
- Aggregate payments exceeded estimated costs for burn DRGs under the current fee schedule.
- There is no support for an across-the-board exemption for burn DRGs. Although a hospital may not have sufficient volume to average out a substantial gain or loss on DRG 504, data do not support having a special payment policy for some of the remaining burn DRGs and not others.

Recommendations

The CHSWC study by RAND suggested several policy alternatives to exempting burn DRGs from the fee schedule. The alternatives were to:

- Base payments on estimated costs which would be preferable to negotiated rates:
 - Less administrative burden.
 - Could include reasonable markup (e.g., 1.2 x cost).
 - Eliminates large gains and losses on individual cases.
- Reduce the outlier threshold for additional payments for high-cost cases:

- Would reduce financial losses on atypically high-cost cases.
 - There would still be large gains on some cases.
- Limit special treatment possibly to:
 - Hospitals with burn units and/or DRGs 504-507.

Design a System for Monitoring Access, Cost, and Quality

As part of the CHSWC/DWC study, RAND is also in the process of establishing a conceptual framework for monitoring medical care. The development of the framework involves specifying the existing measures and data that might be used in identifying where there are critical gaps in the measurement capabilities for priority components of the monitoring system. The monitoring system will provide information on state-level performance and will allow the State to identify potential problems, ask questions and monitor the effect of policy interventions.

Several steps are involved in this process:

Step 1: Identify the broad domains that should be routinely monitored:

- Access and quality.
- Patient satisfaction.
- Cost.
- Health status and return-to-work outcomes.

Step 2: Identify and review potential measures using Institute of Medicine (IOM) criteria for performance measurement:

- Importance of what is being measured.
- Scientific soundness of the measure.
- Feasibility of the measure.

Step 3: Develop design recommendations:

- Involves consultation with stakeholders.
- Includes a core set of measures, some of which may need to be constructed.

RAND has proposed a draft conceptual framework which attempts to map the course of an injured worker through the worker's compensation system and create categories that reflect the system's important components and functions.

Next Steps

The next stage would be a new project to develop measures for the priority areas where existing measures are inadequate. Feedback from stakeholders is expected to assist in identifying issues to be given priority in the monitoring framework.

Roundtable discussion with stakeholders was held on improving the quality of medical care provided to California injured workers. The Roundtable discussed the feasibility of the draft conceptual framework for monitoring the workers' compensation system. CHSWC approved exploring the feasibility of developing and utilizing overuse and underuse criteria in measuring the appropriateness of medical care provided to injured workers.

SPECIAL REPORT: WORKERS' COMPENSATION FRAUD

Introduction

Pursuant to Assembly Bill (AB) 749, the Bureau of State Audits was directed to evaluate and report to the Legislature on the effectiveness of the Fraud Assessment Commission, the Bureau of Fraudulent Claims, the Department of Insurance, the Department of Industrial Relations, local law-enforcement agencies, and district attorneys in identifying, investigating, and prosecuting workers' compensation fraud.

The Bureau of State Audits (BSA) in April 2004 issued the California State Auditor Report, "Workers' Compensation Fraud: Detection and Prevention Efforts Are Poorly Planned and Lack Accountability."

The BSA Report identified problems with the current anti-fraud activities that included the following:

- \$30 million a year are spent on anti-fraud activities, seemingly without an overall strategy to combat workers' compensation fraud.
- "Efforts to detect and prevent workers' compensation fraud are inadequate."
- Baselines for measuring the level of fraud have not been developed. There is currently no way to evaluate if anti-fraud efforts have reduced the overall cost that fraud adds to the system by as much or more than what is spent annually to fight it.
- There is a lack of cooperation between agencies in fighting workers' compensation fraud.

At the December 10, 2004, CHSWC meeting, William Zachry, Chair of the Fraud Assessment Commission (FAC) requested that CHSWC assist with anti-fraud research. In response to this request, CHSWC has established a working group to develop a proposal that would assist the FAC to identify, measure and focus anti-fraud efforts effectively. Selected members from the workers' compensation labor and management community were invited by CHSWC and the FAC to attend the first working group meeting to support this effort.

At the February 4, 2005, meeting, the working group met and decided that CHSWC and the FAC would partner with several agencies in putting together a study design on how to measure workers' compensation medical provider and other types of suspected workers' compensation fraud in California and then would issue a request for proposal (RFP) on the study.

CHSWC is assisting the FAC in conducting a study that would determine the extent of workers' compensation medical overpayments and underpayments of all types, including suspected fraud, waste, abuse, billing and processing errors, in order to allocate the appropriate level of resources to detect and evaluate suspected medical provider fraud in California. In the process of the study, which focuses primarily on suspected medical fraud, the study should focus primarily on developing ongoing measurements for medical underpayments and overpayments. In addition, the study should report other findings of suspected fraud detected in the course of the study.

Background

State of Fraud in California

During the past decade, there has been an energetic and rapidly growing campaign in the State against workers' compensation fraud. The nature and results of that campaign are based primarily on information obtained from the California Department of Insurance (DOI) Fraud Division, as well as from applicable Insurance Code, Penal Code, and Labor Code sections and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

Although workers' compensation fraud was a prosecutable offence under previous laws, a 1988 report of California's Little Hoover Commission observed that insurers had referred 160 claims to the DOI since 1979, and that the Fraud Bureau (now Fraud Division) had investigated only 17 of those cases. Only one case had been prosecuted.

Workers' Compensation Anti-Fraud Legislation

AB 749 authorized the use of employer fraud assessment monies for investigation and prosecution of employers' failure to obtain workers' compensation coverage.

AB 749, AB 227 and SB 228 made several changes to existing workers' compensation fraud laws that included:

Increase in Fines for Fraud

- Insurance Code Section 1871.4(b), amended by AB 227, increases the fine from \$50,000 to \$150,000 for making knowingly false or fraudulent statements for the purpose of obtaining or denying any compensation.

Access to Fraud Information

- Insurance Code Sections 1877.1-1877.5, amended by AB 1099, includes the Employment Development Department (EDD) as a government agency that is authorized to request and receive information regarding workers' compensation fraud. "Licensed rating organizations," such as the Workers' Compensation Insurance Rating Bureau (WCIRB), are authorized to release information regarding workers' compensation fraud, as specified.
- "Authorized governmental agency" means the district attorney of any county, any city attorney whose duties include criminal prosecutions, any law-enforcement agency investigating workers' compensation fraud, the Office of the Attorney General, the Department of Insurance (DOI), the Department of Industrial Relations, the Employment Development Department (EDD), the Department of Corrections, and any licensing agency governed by the Business and Professions Code.

Medical Billing Fraud Referral Protocol

- Labor Code Section 3823(a), added by SB 228, requires that the Administrative Director (AD) of the Division of Workers' Compensation (DWC), in coordination with the Bureau of Fraudulent Claims of the DOI, the Medi-Cal Fraud Task Force, and the Bureau of

SPECIAL REPORT: WORKERS' COMPENSATION FRAUD

Medi-Cal Fraud and Elder Abuse of the Department of Justice, adopt protocols similar to those adopted by the DOI concerning medical billing and suspected provider fraud.

Requirement to Report Fraud

- Labor Code Section 3823(b), added by SB 228, requires that any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that believes that a fraudulent claim has been made by any person or entity providing medical care, as described in Labor Code Section 4600, report the apparent fraudulent claim through the fraud-referral protocol established by Labor Code Section 3823(a).
- New Labor Code Section 3822 requires the AD annually to warn every employer, claims adjuster, third-party administrator, physician, and attorney that participates in the workers' compensation system against committing workers' compensation fraud and to specify the penalties.
- Pursuant to this policy, the investigations undertaken by the Labor Commissioner's field enforcement unit will concentrate on industries, occupations, and areas with high rates of non-insurance, as well as those in which employees are relatively low paid and unskilled and in which there has been a history of other labor law violations.
- Pursuant to Insurance Code Section 1871.8, an insurer or self-insured employer shall provide the following notice, in both English and Spanish, to an injured worker on or with a check for temporary disability benefits: WARNING: You are required to report to your employer or the insurance company any money that you earned for work during the time covered by this check, and before cashing this check. If you do not follow these rules, you may be in violation of the law and the penalty may be jail or prison, a fine, and loss of benefits.
- Pursuant to Insurance Code Section 1877.3, (a) Upon written request to an insurer or a licensed rating organization by an authorized governmental agency, an insurer, an agent authorized by that insurer, or a licensed rating organization to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer or licensed rating organization may possess relating to any specific workers' compensation insurance fraud investigation.

(b) (1) When an insurer or licensed rating organization knows or reasonably believes it knows the identity of a person or entity whom it has reason to believe committed a fraudulent act relating to workers' compensation insurance claim or a workers' compensation insurance policy, including any policy application, or has knowledge of such a fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or agency authorized by an insurer to act on its behalf, or licensed rating organization shall notify the local district attorney's office and the Bureau of Fraudulent Claims of the Department of Insurance, and may notify any other authorized governmental agency of that suspected fraud and provide any additional information in accordance with subdivision (a). The insurer or licensed rating organization shall state in its notice the basis of the suspected fraud.

Anti-fraud Program Funding

The funding level for the State anti-fraud program is set annually by the FAC, which is composed of seven members who are appointed by the Governor for four-year terms, consisting of representatives from self-insured employers, insured employers, representatives from organized labor, workers' compensation insurers, and the President of the State Compensation Insurance Fund (SCIF) or a designee.

Funding for the program is derived from an annual assessment on employers. The assessment applied to insured employers is based on the dollar amount of their workers' compensation insurance. The assessment on self-insured employers is based on payroll. The initial assessment for the program was set at \$3 million. However, by 1994, the annual assessment had increased to \$25 million. In 1997, the annual assessment was further increased to \$28.5 million. Following an additional increase, the annual assessment for fiscal year 2001-02 and 2002-03 was \$31.5 million. Currently, the annual assessment is \$37.5 million.

Originally by statute, half of the funding went to the Fraud Division and half to local district attorneys. However in 1997, a statute change allowed for more flexibility resulting in local district attorneys receiving a greater proportion of the annual assessment. In March 1999, the FAC allocated \$13.16 million in funds to the Fraud Division and \$16.84 million for local district attorneys. In fiscal years 2001-02 and 2002-03, the FAC allocated \$14.2 million in funds to the Fraud Division and \$17.3 million for local district attorneys.

Fiscal Year	Total Amount	District Attorneys	Fraud Division
FY 2003-04	\$34,203,802	\$19,364,000	\$14,839,802
FY 2004-05	\$35,853,992	\$20,351,275	\$15,352,717
FY 2005-06	\$37,489,191	\$21,368,839	\$16,120,352

Distribution of Funding

Each county in the State is eligible for funds to prosecute workers' compensation fraud cases. By statute, each district attorney seeking a portion of the funds must submit an application to the Insurance Commissioner (IC) setting forth in detail the proposed use of any funds provided. Any district attorney receiving such funds must agree that the funds will be used solely for investigating and prosecuting cases of workers' compensation fraud and must submit an annual report to the IC with respect to the success of the district attorney's efforts. The IC makes the distribution of funds among the district attorneys who apply with the advice and consent of the Fraud Division and the FAC.

Types of Cases / Complaints Investigated

According to the Fraud Division, the types of complaints or cases investigated include (1) "phony workers' compensation claims," including claims made by workers, medical providers, pharmacies, attorneys and others; (2) "fraudulent denial of workers' compensation benefits"; and (3) "workers' compensation premium fraud by employers; (4) willfully uninsured employers fraud." There are criminal prohibitions against each of these activities, primarily under Insurance Code Sections 1871.4, 11760 and 11880, Labor Code 3700.5, and Penal Code 550. The sources of Fraud Division investigations include referrals by insurance companies and self-insured employers, citizen complaints and Division-initiated cases.

Insurance Code Sections 1877.1-1877.5 are the "Workers' Compensation Insurance Fraud Reporting Act." Pursuant to these and other provisions, all licensed insurers doing business in the State and all self-insured employers, the State Compensation Insurance Fund, and all admitted insurers doing business in the State that suspect fraudulent claim activity must report it to the Fraud Division and the local district attorney. A report must be made within 30 days of knowing or reasonably believing a claim to be fraudulent. The report must be submitted on a form prescribed by DOI.

Special Investigation Units (SIU)

In this connection, every licensed insurer doing business in the State is required to maintain a Special Investigation Unit (SIU). The requirement's intent is to establish a systematic method for detecting and reporting suspected fraudulent claims. SIU Annual Compliance Reports are required to be sent to the Fraud Division detailing how insurers are complying with DOI regulations. This report must describe the insurer's anti-fraud plan, as well as current calendar-year activities and future planned activities. This includes reporting the number of claims processed during the calendar year, the number of claims referred to the SIU, and the number of suspected fraudulent claims reported to the Fraud Division and local district attorneys.

Insurance Code Section 1877.3 states in part: "When an insurer or licensed rating organization knows or reasonably believes it knows the identity of a person or entity whom it has reason to believe committed a fraudulent act relating to a workers' compensation insurance claim or a workers' compensation insurance policy, including any policy application, or has knowledge of such a fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or agent authorized by an insurer to act on its behalf, or licensed rating organization shall notify the local district attorney's office and the Bureau of Fraudulent Claims of the Department of Insurance, and may notify any other authorized governmental agency of that suspected fraud and provide any additional information in accordance with subdivision (a). The insurer or licensed rating organization shall state in its notice the basis of the suspected fraud."

Target Areas

CHSWC's previous report entitled "Report on the Workers' Compensation Anti-Fraud Program," published in 2001, specified that due to their economic impact, the foremost targets of the fraud program budgets and resources should be medical provider and employer premium fraud. The report also pointed out that efforts should be expended to identify illegally uninsured employers.

Efforts of Other States

According to Professor Malcolm Sparrow, a nationally recognized expert in the area of fraud and fraud evaluation, many other states are now considering some form of measurement program to:

- Establish the parameters of suspected fraud and abuse evaluation.
- Determine appropriate investments in detection and evaluation of suspected fraud.

States such as Texas, Illinois, and California have conducted measurement studies of Medicaid programs to identify where their program is at greatest risk for payment errors and thus establish how best to distribute Medicaid anti-fraud resources.

Purpose and Scope of the CHSWC Study

The purpose and scope of the CHSWC study is to:

- Determine the extent of workers' compensation medical overpayments and underpayments of all types in order to allocate the appropriate level of resources to detect and evaluate suspected medical provider fraud in California.
- Provide recommendations for ongoing detection and monitoring of suspected abuse and fraud in the California workers' compensation system.
- Identify potential vulnerabilities and suspected perpetrators of fraud.

The study shall primarily focus on, but not be limited to, all of the following:

- Identification of methods to detect and measure the extent of medical overpayments and underpayments of all types in the workers' compensation system based on data.
- Development of baselines for measuring the level of medical overpayments and underpayments of all types including fraud, waste, abuse, billing and processing errors.

In the course of the study, the study shall:

- Establish benchmarks for performance monitoring with respect to the current and future fraud-reduction programs.
- Determine appropriate measures and tools for detecting suspected fraud.

The following major areas should be addressed:

Measurements of Abuse and Suspected Fraud in the Workers' Compensation System

The Bureau of State Audits has specified that the extent and nature of fraud within the workers' compensation system is not adequately measured or monitored.

Several state agencies have been and are assigning scarce resources to the fight against fraud. Cooperation among state agencies is critical to assess and deter fraudulent activities. The study

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shall advise how agencies can best work together to detect, assess and deter fraud and to implement ongoing monitoring.

In addition, there is a need to measure how much and what types of fraud exist in the workers' compensation system and develop a systematic measurement of fraud. In response to this, the University of California at Berkeley and Boston University will be conducting a joint study that will estimate fraud and abuse related to lack of coverage and premium avoidance.

The final results of the study should combine the results from the joint University of California-Boston University study with the medical provider sections of the study to:

- Develop baseline measures for fraud in the workers' compensation system that would assist the FAC and the IC to measure whether antifraud efforts have actually reduced the overall cost that fraud and abuse add to the system.
- Measure how much abuse and fraud exist in the workers' compensation system.
- Identify the type of abuse and fraud that exists in the workers' compensation system.
- Develop recommendations for a statewide plan on how to reduce abuse and fraud in the workers' compensation system which would include measurable performance targets of anti-fraud activities.

Medical Provider Fraud

Over 50 percent of California's workers' compensation benefits paid out in 2003 were for medical costs, and medical costs have continued to rise despite a decline in claims frequency. In addition, employers in California experience higher costs for workers' compensation claim medical care than employers in most other states. Several reports have pointed to the high utilization of specific kinds of medical services in California's workers' compensation system as a major reason for this differential.

The identification of medical provider overpayments and underpayments of all types including fraud, waste, abuse, billing and processing errors could help to reduce the high medical costs in the workers' compensation system.

This portion of the study will:

- Identify the extent of workers' compensation cases where medical provider overpayments and underpayments of all types exist, including situations such as:
 - Mis-diagnosis.
 - Documentation errors (insufficient or inaccurate documentation).
 - Coding errors or use of an inappropriate code (upcoding).
 - Over-billing.
 - Duplicate billing.
- Identify the costs due to any or all of the above situations where medical provider overpayments and underpayments of all types exist:
 - Identify any suspected fraudulent claim billing patterns.

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- Identify and analyze any claim billing process, procedure, policy or guideline that allows providers to submit and receive overpayments or payments for suspected fraudulent medical or health care claims.
- Identify potential overpayments and underpayments due to non-compliance with published program rules, policies, procedures, or guidelines.

Status

The study is subject to funding availability.

SPECIAL REPORT: CHSWC WHITE PAPER ON COST/BENEFIT OF IMPLEMENTING ELECTRONIC DEPOSIT FOR UNEMPLOYMENT AND DISABILITY BENEFITS IN THE STATE OF CALIFORNIA

Background

CHSWC developed a white paper to improve administrative efficiency and reduce the transaction costs of processing paper checks for the payment of unemployment and disability benefits in the State of California. Over 2.8 billion dollars of administrative savings over a five-year period could be achieved by:

- Utilizing electronic deposit by mandating that it be offered by payors to payees in lieu of paper check disbursements.
- Utilizing electronic benefit transfer cards (EBT) for un-banked recipients.

These efficiencies could be used for unemployment insurance (UI), state disability insurance (SDI), workers' compensation, non-industrial disability (NDI), uninsured employers, and other administrative systems. Exploration of the feasibility of other programs, such as Temporary Assistance for Needy Families (TANF), is not included in this document.

Some of the benefits of moving to an electronic payment system include:

- Cost savings.
- Timely delivery of benefits to recipients.
- Elimination of the problem of checks being lost in the mail.
- Potential for fraud reduction, since electronic payment transactions leave a specific footprint and are highly auditable.

The Commission on Health and Safety and Workers' Compensation (CHSWC) is required to assist the Administrative Director (AD) of the Division of Workers' Compensation (DWC) in making a report, on or before July 1, 2004, that offers recommendations on how to improve farm workers' access to workers' compensation benefits. Labor Code 4651(c). states, "On or before July 1, 2004, the administrative director shall present to the Governor recommendations on how to provide better access to funds paid to injured workers in light of requirements of federal and state laws and regulations governing the negotiability of disability indemnity payments. The administrative director shall make specific recommendations regarding payments to migratory and seasonal farm workers. The Commission on Health and Safety and Workers' Compensation and the Employment Development Department shall assist the administrative director in the completion of this report."

It was in the course of this investigation that CHSWC staff identified potential areas for administrative savings that are discussed below.

CHSWC staff contacted and worked with the Employment Development Department (EDD), the State Controller's Office, DWC, State Compensation Insurance Fund (SCIF), the California

Workers Compensation Institute (CWCI), and the States of Ohio, Iowa and Wisconsin. Additional contacts were made with federal government benefit programs.

Review of Administrative Systems

Staff conducted a preliminary review of California administrative systems with the potential of administrative savings by adopting electronic deposit and/or EBT.

- State Disability Insurance (SDI). The SDI program provides benefits for non-industrial injuries or illnesses covering approximately 12.8 million California workers. The program is funded by employee contributions with most private-sector employees eligible for SDI. Benefits for the SDI program are paid by EDD. For disabilities beginning on or after January 1, 2004, the program's maximum weekly benefit is \$728. In 2003, benefits paid totaled approximately \$3.05 billion.¹⁰ These benefits are projected to increase to \$3.66 billion in 2004 and \$4.22 billion in 2005. The increase is partially attributable to the Paid Family Leave Program (PFL) which will begin accepting and processing claims in July 2004. It is estimated that the PFL will process approximately 139,900 claims from July-December 2004, totaling approximately \$181,869,000. Both SDI and PFL payments are bi-weekly.
- Non-industrial Disability Insurance (NDI). State government workers who are disabled by a non-industrial condition or whose injury may be in dispute for workers' compensation are entitled to up to 26 weeks of NDI benefits. State employees do not presently qualify for SDI, although they may collectively bargain for coverage. NDI is an employer-paid benefit, and weekly payments are considerably less than SDI. The payment is limited to \$125 or \$135 per week, depending on the collective bargaining agreement that covers the employees. Benefits are paid once per month. There are approximately 7,800 claims per year. In fiscal year 2002/03, benefits paid totaled approximately \$14 million.¹¹
- Unemployment Insurance (UI). Unemployment insurance is a unique federal-state program based on federal law but executed in its relationship to the employer and the unemployed worker through state law and administered by state employees. The Unemployment Insurance Program, commonly referred to as UI, provides weekly UI payments for workers who lose their job through no fault of their own. Eligibility for benefits requires that the claimant be able to work, be seeking work, and be willing to accept a suitable job. The payments for UI are issued bi-weekly. Currently, the UI trust fund is facing some insolvency problems due to an antiquated financing structure.

California employers pay a maximum tax rate of up to 5.4 percent on the first \$7,000 of wages per employee per year (California taxable wage ceiling is \$7,000). Currently (2004), an emergency surcharge of 15 percent is in effect due to the Fund's low solvency level (it is not solely insolvency that triggers this surcharge). This surcharge is expected to stay in effect in 2005. The \$7000 taxable wage ceiling represents the minimum taxable wage ceiling allowed by Federal law. Federal law also requires a

¹⁰ "Disability Insurance Program." Employment Development Department Fact Sheet. <http://www.edd.ca.gov/direp/de8714c.pdf> and "California Disability Insurance Fiscal Transactions and Activities from 200 to 2002" from EDD.

¹¹ "Non-industrial Disability Insurance" Conversation with Barbara Ernst, Manager of NDI Unit at EDD. <http://www.dpa.ca.gov/benefits/health/workcomp/pubs/Disability/page4.shtml>

State's maximum tax rate to be at least 5.4 percent. Many California employers pay at less than the maximum allowed based upon the California UI experience rating system.

UI is financed by unemployment program tax contributions from employers. Part of the employer's tax goes directly to the federal government to pay for the administration of the system. The greater portion goes into a special UI Trust Fund from which benefit payments are made to the workers who are laid off. The maximum amount of a regular UI claim is either 26 times the claimant's weekly benefit amount or one-half of the claimant's base period wages, whichever is less. Maximum weekly benefits are \$410 per week. Effective 2005, the maximum weekly benefit amount is scheduled to increase to \$450.

In 2003, there were 2,954,617 initial UI claims filed and approximately \$6 billion were paid out.¹²

Other States and Other Systems with Electronic Payment Systems

Several states have implemented or are in the process of implementing an electronic deposit or debit card system. The State of Ohio's Bureau of Workers' Compensation, an exclusive state fund, gives injured workers the option to have electronic deposit of benefit payments and has also instituted a debit card for its un-banked workers. According to the State of Ohio, about 50 percent of injured workers elect to have their benefits transferred via direct deposit. The cost of processing a payment by check is about \$2.50. The cost of processing a payment via an electronic transfer is about 4.5 cents.

The State of Wisconsin is initiating a project whereby the Uninsured Employers Fund (UEF) and UI payments would be provided via a stored value card. Workers who voluntarily elect to have their payment of benefits transferred to this card could access their benefits free of charge at banking facilities.¹³ Colorado, Washington and Minnesota have implemented electronic payment system cards for child support. The State of Iowa mandates the use of the electronic payment system card or direct deposit for child support.¹⁴

In addition to other state systems, the California Department of Health and Human Services (CDHHS) uses electronic payment systems to distribute cash benefits and food stamps to clients. According to the CDHHS Electronic Benefits Transfer Project, conservatively, California could save more than \$1.00 on every warrant payment it converts to a direct deposit¹⁵ Other estimates based on information from the California Industry Claims Information System (ICIS) report indicate a savings of \$10.00 per transaction.¹⁶

¹² Unemployment Quick Statistics, www.edd.ca.gov.

¹³ Conversation with Brian Krueger, Director, Bureau of Insurance Programs, Wisconsin Department of Workforce Development.

¹⁴ Conversation with Kipp Sonnentag, Controller, Wisconsin Department of Workforce Development and Ann Rezarch, Program Specialist for Contracts, Bureau of Collections, Iowa Department of Human Services.

¹⁵ California Health and Human Services Data Center. "Concept for EBT Phase II: The California Payments System." July 3, 2003.

¹⁶ "ICIS Report - Average Number of Medical Payments by Claim Type. CWCI, January 2000."

Recommendation

CHSWC recommends that EDD offer benefit payments by direct deposit and that EDD be authorized to require benefit payments to be made by electronic transfer for recipients not electing direct deposit. CHSWC recommends that the Governor and the Legislature authorize the AD of the DWC to mandate the payment of workers' compensation benefits by direct deposit at the election of the payee and to permit or mandate the payment of benefits by electronic benefit transfer for recipients who do not elect direct deposit.

Cost / Benefit Analysis

Staff received different documented estimates for determining savings from implementing the Electronic Fund Transfer System. We will therefore display all three alternatives.

The three estimates are based on information from the Ohio Bureau of Workers' Compensation, California Department of Health and Human Services Data Center, the ICIS report by CWCI, and the Workers' Compensation Insurance Rating Bureau (WCIRB).

Transaction Data Sources

Estimates of the number of check transactions for each program were derived in the following way:

- UI: Number of checks issued in 2003 per EDD was 17,913,765.
- SDI: Number of checks issued in 2003 per EDD was 5,087,331.
- NDI: Number of checks issued in the FY 2002/03 per State Controller's Office was 24,688.
- PFL: Estimated number of checks to be issued for July 2004-June 2005 is approximately 467,530.
- Workers' compensation indemnity payment transactions: total indemnity benefits paid in workers' compensation for insured employers were about \$4 billion in 2002. If the average weekly benefit, temporary disability (TD) and permanent disability (PD), etc., were \$300, that would give an estimate of about 6.5 million checks.¹⁷ Since self-insureds comprise 20 percent of the market, the estimated check transactions would be 8.1 million.
- Workers' compensation medical payment transactions: workers' compensation medical payment transactions over the life of a claim average about 32 transactions per claim.¹⁸ With about 612,000 workers' compensation claims per year,¹⁹ there are about 19.6 million medical payment transactions per year. Since self-insureds comprise 20 percent of the market, the estimated medical payment check transactions would be 24.5 million.

¹⁷ Estimates prepared by Frank Neuhauser of UC Berkeley.

¹⁸ "ICIS Report - Average Number of Medical Payments by Claim Type. CWCI, January 2000." Analysis was updated by CWCI in July 2004.

¹⁹ "California Workers' Compensation Policy Year Statistics: WCIRB Bulletin No.2003-16, WCIRB July 14, 2003." Number of claims based on Policy Year 2000. -1st Report of Insured Employers.

SPECIAL REPORT: IMPLEMENTING ELECTRONIC DEPOSIT

Alternative 1: Cost/Benefit Analysis Based on the Experience from State of Ohio, Bureau of Workers' Compensation.

As noted above, in the State of Ohio, about 50 percent of injured workers elect to have their benefits transferred via direct deposit. The cost of processing a payment by check is about \$2.50. The cost from processing a payment via an electronic transfer is about 4.5 cents.

Assumptions:

- The same percentage of workers will volunteer to have their benefits paid via direct deposit as in the State of Ohio (50 percent).
- Estimated cost savings would be similar in California as in Ohio. The costs savings are estimated to be about \$2.46 per transaction
- Estimated savings using \$2.50 per transaction for the current costs and 4.5 cents per transaction for estimated electronic deposit costs:

Agency	Estimated Check Transactions per year	Current Estimated Costs (using \$2.50 per transaction)	Estimated Cost with Electronic Deposit (using 4.5 cents per transaction)	Estimated Savings
UI	17,913,765	\$44,784,413	\$806,119	\$43,978,294
SDI	5,087,331	\$12,718,328	\$228,930	\$12,489,398
PFL	467,530	\$1,168,825	\$21,039	\$1,147,786
NDI	24,688	\$61,720	\$1,111	\$60,609
WC indemnity payments	8,100,000	\$20,250,000	\$364,500	\$19,885,500
WC medical payments	24,500,000	61,250,000	1,102,500	\$60,147,500
UEF	22,484	\$56,210	\$1,012	\$55,198
TOTAL:	\$56,115,798	\$140,289,495	\$2,435,211	\$137,854,284

Sources EDD, UEF, SCO, WCIRB, CWCI, Ohio Bureau of Workers' Compensation, CHSWC Staff Calculations

Annual Savings

Assuming a penetration rate of 50 percent, the savings would be about \$69 million.

Alternative 2: Cost/Benefit Analysis Based on the Transaction Costs from California Department of Health and Human Services

Estimated savings of \$1.00 per transaction if converted from check to electronic deposit:

Agency	Estimated Check Transactions per year	Estimated Savings (\$1.00 per transaction that is converted to a direct deposit)
UI	17,913,765	\$17,913,765
SDI	5,087,331	\$5,087,331
PFL	467,530	\$467,530
NDI	24,688	\$24,688
WC indemnity payments	8,100,000	\$8,100,000
WC medical payments	24,500,000	\$24,500,000
UEF	22,484	\$22,484
TOTAL:	56,115,798	\$56,115,798

Sources: EDD, UEF, SCO, California Department of Human Services Data Center EBT Project, WCIRB, CWCI, CHSWC Staff calculations

Annual Savings

Assuming a 50 percent penetration rate, the estimated saving would be about \$28 million.

Alternative 3: Cost/Benefit Analysis Based on Estimates from the CWCI ICIS Report

Assumption:

As noted above, the estimates of savings are based on information from an ICIS report of CWCI. The report estimated that the cost of generating a medical benefit notice is \$10. For the purposes of the estimates below, we are assuming that generating and mailing an indemnity or medical benefit check cost the same as generating and mailing a benefit notice.

Estimated savings of \$10.00 per transaction if converted from paper/check transaction to an electronic deposit system.²⁰

²⁰ California Workers' Compensation Institute, 2000.

SPECIAL REPORT: IMPLEMENTING ELECTRONIC DEPOSIT

Agency	Estimated Check Transaction per year	Estimated Savings (\$10.00 per transaction that is converted to a direct deposit)
UI	17,913,765	\$179,137,650
SDI	5,087,331	\$50,873,310
PFL	467,530	\$4,675,300
NDI	24,688	\$246,880
WC indemnity payments	8,100,000	\$81,000,000
WC medical payments	24,500,000	\$245,000,000
UEF	22,484	\$224,840
TOTAL:	56,115,798	\$561,157,980

Sources EDD, UEF, SCO, California Department of Human Services Data Center EBT Project, WCIRB, CWCI, CHSWC Staff calculations

Annual Savings

Assuming a 50 percent penetration rate, the savings would be about \$281 million.

Cumulative Savings

Estimated Cumulative Savings Based on California Department of Health & Human Services Estimates of Transaction Costs

Agency	Year 1	Year 2	Year 3	Year 4	Year 5
UI	\$17.9 million	\$35.8 million	\$53.7 million	\$71.6 million	\$89.5 million
SDI	\$5.1 million	\$10.2 million	\$15.3 million	\$20.4 million	\$25.5 million
PFL	\$467,530	\$935,060	\$1,402,590	\$1,870,120	\$2,337,650
NDI	\$24,688	\$49,376	\$74,064	\$98,752	\$123,440
WC indemnity payments	\$8.1 million	\$16.2 million	\$24.3 million	\$32.4 million	\$40.5 million
WC medical payments	\$24.5 million	\$49 million	\$73.5 million	\$98 million	\$122.5 million
UEF	\$22,484	\$44,968	\$67,452	\$89,936	\$112,420
TOTAL	\$56.1 million	\$112.2million	\$168.3million	\$224.4 million	\$280.5 million

Sources EDD, UEF, SCO, California Department of Human Services Data Center EBT Project, WCIRB, CWCI, CHSWC Staff calculations.

Note: Please note that all totals are rounded and do not include the 50 percent penetration rate.

Cumulative Savings Based on CWCI Estimates

Estimated Cumulative Savings Based on California Workers' Compensation Institute Estimates of Transaction Costs

Agency	Year 1	Year 2	Year 3	Year 4	Year 5
UI	\$179.1 million	\$358.2 million	\$537.3 million	\$716.4 million	\$895.5 million
SDI	\$50.9 million	\$101.8 million	\$152.7 million	\$203.6 million	\$254.5 million
PFL	\$4.7 million	\$9.4 million	\$14.1 million	\$18.8 million	\$23.5 million
NDI	\$246,880	\$493,760	\$740,640	\$987,520	\$1.2 million
WC Indemnity payments	\$81 million	\$162 million	\$243 million	\$324 million	\$405 million
WC medical payments	\$245 million	\$490 million	\$735 million	\$980 million	\$1.2 billion
UEF	\$224,840	\$449,680	\$674,520	\$899,360	\$1.1 million
TOTAL	\$561.2 million	\$1.1 billion	\$1.7 billion	\$2.2 billion	\$2.8 billion

Sources EDD, UEF, SCO, California Department of Human Services Data Center EBT Project, WCIRB, CWCI, CHSWC Staff calculations

Note: Please note that all totals are rounded and do not include the 50 percent penetration rate.

Overall Savings

Based on the above alternatives and assuming 100 percent compliance, the range of annual savings would be from \$56 million to \$561 million. Five-year cumulative savings would be about \$2.8 billion. These figures would be reduced depending on the penetration rate.

SPECIAL REPORT: UNITED STATES LONGSHORE AND HARBOR WORKERS' COMPENSATION MARKET IN CALIFORNIA

Introduction

Assembly Member Vargas' office requested that CHSWC provide information on the U.S. Longshore and Harbor (U. S. L & H) Workers' Compensation Act to explore the feasibility of creating a guaranty fund for U.S. L & H workers' compensation insurance carrier insolvencies and to provide information on other states, particularly Washington, on this issue.

Currently, in California, there may be insufficient guaranty fund coverage of U.S. L & H claims. A special U.S. L & H guaranty fund in California has the potential to benefit U.S. L & H employers and labor in the following way:

- Employers – employers whose U.S. L & H insurance carriers have become insolvent would not be held liable for payment of claims if California has an established guaranty fund for longshore cases.
- Employees – employees could avoid either non-payment of claims or extreme delays in payment.

United States Longshore and Harbor Workers' Compensation Insurance²¹

Overview of U.S. L & H

The United States Longshore and Harbor Workers' Compensation Act²² is a federal law that provides protection to about 500,000 workers for injuries or occupational diseases that may occur on the navigable waters of the United States or in adjoining areas. The Act initially applied to maritime workers on the water; however, in 1972, it was amended to cover maritime workers on land adjacent to navigable waters.

The Act requires maritime employers to cover a special type of workers' compensation insurance or self-insure their risk. The program provides about \$670 million in benefits to more than 72,000 workers annually. These benefits are paid directly by an authorized self-insured employer or by an authorized insurance carrier. The Division of Longshore and Harbor Workers' Compensation (DLHWC), under the United States Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), administers this Act.²³

²¹ Some of the information in this section is derived from State of Washington, The Office of the Insurance Commissioner, "A Report to the Legislature Regarding the Impact of Creating Guaranty Fund Protection for Workers' Compensation Policies" December 2004.

²² 33 U.S.C. Sec. 901 et seq.

²³ www.dol.gov/esa/owcp/dlhwc

U.S. Department of Labor Special Fund

Under the Act, a Special Fund was created to address claims for second injuries.²⁴ The U.S. DOL finances the Special Fund with assessments. Every authorized underwriter of U.S. L & H insurance, including self-insured employers, is assessed on the basis of claim payments. Under the Act, the obligation to pay benefits to injured workers is the responsibility of the employer.²⁵ The employer is required to either insure such obligations or receive permission from the U.S. DOL to self-fund.²⁶ If an employer insures its risks, the law recognizes that payments made by the carrier also satisfy the employer's obligation as long as the carrier makes them. In the event the insurer becomes insolvent and is unable to pay claims, the employer is obligated to pay the benefits.

Even though the Special Fund was created to address claims for second injuries, in the event an insurer becomes insolvent and there is no employer or the employer becomes insolvent or is in imminent danger of becoming insolvent, at the discretion of the U.S. DOL, the Special Fund may be used to cover unpaid claims.²⁷

Although the U.S. DOL has the discretion to pay claims in cases of insolvencies under the DLHWC Special Fund, the Fund is not a guaranty fund. It is the fund of last resort. Whenever an authorized carrier becomes insolvent, the employer is required to pay the claim. If both the carrier and employer become bankrupt, the injured worker must first obtain a compensation order from the Deputy Commissioner of the DLHWC or an Administrative Law Judge from the Office of Administrative Law Judges (OALJ). After a decision is rendered, the injured worker receives a default order that then may be filed with a Federal District Court for the judicial district where the employer has his principal place of business or maintains an office, for judgment. If the judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor may, at his or her discretion, make payment from the Special Fund. The procedure, if successful for an injured worker, could take years for a resolution.²⁸

Current Changes in U.S. L & H Regulations

The U.S. DOL believes that there has been a continued, accelerating trend toward guaranty fund pullback in the states and is concerned that there may be inadequate guaranty fund coverage for U.S. L & H.²⁹ According to the DOL, the top 15 U.S. L & H insurers write 75 percent of the national U.S. L & H market. Given the risks inherent in writing U.S. L & H coverage and the limited market size, the U.S. DOL believes that action is required to ensure that U.S. L & H claims in the future are paid in case of insurer insolvency.³⁰

²⁴ 33 U.S.C. Sec. 908(f)

²⁵ 33 U.S.C. Sec. 904

²⁶ DOL requires an employer to post security to self-fund its USL&H obligations.

²⁷ State of Washington, The Office of the Insurance Commissioner, "A Report to the Legislature Regarding the Impact of Creating Guaranty Fund Protection for Workers' Compensation Policies," December 2004.

²⁸ 33 U.S.C. Section 918 (a) and (b) and conversation with John Martone, Chief of the Branch of Insurance and Financial Management, DLHWC.

²⁹ Conversation with Michael Niss, Director, DLHWC, John Martone, and Amanda Smith.

³⁰ State of Washington, The Office of the Insurance Commissioner, "A Report to the Legislature Regarding the Impact of Creating Guaranty Fund Protection for Workers' Compensation Policies," December 2004.

In March 2004, the DOL published a notice of proposed rulemaking relating to revision of the regulations governing certain aspects of the administration of the United States Longshore and Harbor Workers' Compensation Act.³¹ According to the DLHWC, the proposed regulations are currently under review and are expected to become effective in 2005.

The new regulations will require all insurers writing U.S. L & H insurance in states without guaranty fund coverage to post full security to their U.S. L & H claims. The U.S. DOL will not require an insurer to post security if a guaranty fund that fully covers U.S. L & H claims exists in the state. The security posted by an insurer will be used by the DOL to cover that insurer's defaulted claims in the case of insolvency.

In California, since a guaranty fund for Longshore and harbor workers currently does not exist, insurers will have to post 100 percent of their reserves for Longshore cases in the form of a surety bond or a letter of credit. Insurers can also post their reserves in the form of a deposit of negotiable securities in a Federal Reserve Bank.

The DOL acknowledges that in states without guaranty fund coverage, the new security requirement will be a heavy burden and could cause U.S. L & H insurers without a large book of business to leave those states.³²

U.S. L & H Market in California

Importance of the Maritime Industry in California

California is one of the largest markets for U.S. L & H insurance carriers in the United States, representing approximately 16 percent of U.S. L & H claims and losses nationwide,³³ and is the single largest trading entity in the United States.

Waterborne commerce through California's ports accounts for 40 percent of the national total. Three of the four largest container ports (based on volume) in the country are located in California (Los Angeles, Long Beach and Oakland). The value of trade through the Los Angeles, San Francisco and San Diego Customs Districts was \$392 billion in the year 2000. The rest of the U.S. depends on this network, particularly for access to the Pacific Rim. For example, 60 percent of the imported cargo consumed in the Chicago area flows through the Ports of Los Angeles and Long Beach. Approximately 35 percent of all U.S. waterborne containers move through the San Pedro Bay Ports, with an estimated cargo value of nearly \$200 billion. Cargo movement via California ports is projected to increase dramatically well into the next decade.³⁴

³¹ 20 CFR Parts 701 and 703.

³² State of Washington, The Office of the Insurance Commissioner, "A Report to the Legislature Regarding the Impact of Creating Guaranty Fund Protection for Workers' Compensation Policies," December 2004.

³³ E-mail from John Martone. March 30, 2005.

³⁴ California Marine and Intermodal Transportation System Advisory Council, Northern California Marine Transportation System Advisory Council, Southern California Marine Transportation System Advisory Council, Report on "California Marine Transportation System Infrastructure Needs (March 11, 2003). http://www.slc.ca.gov/Reports/MTS_Infrastructure_Needs_Report/MTS_Infrastructure_Needs_Report_102203_Entire_Document.pdf

Size of the U.S. L&H Market in California

There are approximately 400 insurance carriers authorized by the DLHWC to write U.S. L & H policies nationwide. In California, there are seven insurance carriers/groups³⁵ who actively write U.S. L & H policies. These include:

- State Compensation Insurance Fund (SCIF)
- Majestic Insurance Company
- Seabright Insurance Company
- Homeport Insurance Company
- American International Group (AIG)
- Zurich Insurance Group
- Liberty Mutual Group.

In addition, Signal Mutual Indemnity Association, an association of self-insured employers, is authorized by the DLHWC to carry insurance for its members. Furthermore, there are three major self-insured employers who cover U.S. L & H for their employees in California. These include:

- American President Lines (APL), Limited //Eagle Marine Services Limited
- Metropolitan Stevedore Company and,
- National American Steel and Shipbuilding Company (NASSCO), a General Dynamics company.³⁶

According to the Workers' Compensation Insurance Rating Bureau (WCIRB), the total reported U.S. L & H California premium in 2003 of WCIRB members was about \$47 million. SCIF writes about 55 percent of the U.S. L & H business in California.³⁷

Insolvencies

There have been several insurance companies and a self-insured employer in California that have become insolvent in the last several years and have had U.S. L & H claims. According to Jack Martone and Charles Holbrook, these include Fremont, Reliance and Legion. The insolvent self-insured employer in California is California Stevedore and Ballast Company.

According to the U.S. DOL estimates, in California, the DLHWC is paying out about \$400,000 to \$800,000 annually in about 10 to 15 claims from insolvent carriers.³⁸

³⁵ Note: Under AIG, there are eight individual insurance carriers authorized to write U.S. L & H. Under Zurich Insurance Group, there are ten. Under Liberty Mutual, there are nine.

<http://www.dol.gov/esa/owcp/dlhwc/lscarrrier.htm#authorized%20self-insured%20employers>, www.insurance.ca.gov

³⁶ This estimate has been derived based on the conversation with Charles Holbrook, Claims Examiner with DLHWC in San Francisco, California.

³⁷ E-mail from Dave Bellusci, Chief Actuary, WCIRB (March 23, 2005). E-mail from John Martone, Chief of the Branch of Insurance and Financial Management for the US Department of Labor, Employment Standards Administration, Division of Longshore and Harbor Workers' Compensation (March 28, 2005).

³⁸ Charles Holbrook, Claims Examiner with DLHWC in San Francisco, California.

Potential Impact of U.S. L & H Insolvencies in California

The impact of future U.S. L & H insurer insolvencies in California could be significant in the absence of a guaranty fund to cover the claims.

Beginning in 2005, U.S. DOL regulations will require that insurers post full security for all U.S. L & H risks located in the state, unless a guaranty fund is created by the Legislature. Without a guaranty fund to cover U.S. L & H claims, insurers with a small U.S. L & H book of business may decide not to provide U.S. L & H coverage rather than post full security for their risks. The result will be a shrinking of a voluntary U.S. L & H market. Although the remaining insurers will have posted security with the U.S. DOL for their risks, if that security is inadequate to cover all of the claims, the remaining claims will become the responsibility of employers.

Currently, employers whose U.S. L & H insurance carriers become insolvent are held liable for payment of claims. Employees face either non-payment of claims or extreme delays in payment under the U.S. DOL Special Fund. The U.S. DOL Special Fund may cover the claims, but only if the employer is placed in imminent danger of going insolvent or has gone insolvent.

Funding Options for U.S. L & H Market in California

California Insurance Guarantee Association (CIGA)

A possible solution to provide adequate coverage for future potential insolvent U.S. L & H claims in California could be to establish a separate guaranty fund for U.S. L & H claims to be administered by the California Insurance Guarantee Association (CIGA). A similar proposal is being considered in the State of Washington.

CIGA was established in 1969 to administer and pay the "covered claims" of insolvent property and casualty insurance carriers. All property and casualty insurance companies admitted to conduct business in California are required to be a member of CIGA. CIGA's obligations are divided into three separate categories of claims: (1) workers' compensation; (2) homeowners' and automobile; and (3) other claims. Unless otherwise noted, a CHSWC issue paper³⁹ focuses exclusively on CIGA's obligations for workers' compensation claims.

CIGA obtains the funds to pay its covered claims through assessments (technically, "premium") charged to member companies, as well as releases special statutory deposits previously placed with the state by the insolvent carriers, distributions from the insolvent carriers' estates (to include reinsurance collections), and investment income. Assessed member insurers are permitted to recoup their CIGA payments by adding a surcharge to their workers' compensation policies.

CIGA's assessments are based on the amount of net written premiums paid by employers. To the extent that the net written premium is reduced by large deductibles, CIGA collections from assessments are also reduced. Self-insureds also pay a deposit assessment to the security fund, which is determined based on their required deposit amount and their credit worthiness.

³⁹ CHSWC Issue Paper on the United States Longshore and Harbor Workers' Compensation Market in California, CHSWC, April 2005.

CIGA could administer the separate U.S. L & H account as a separate and unique fund. The assessments would be based on U.S. L & H employers to cover this fund.

CHSWC Recommendations

CHSWC recommends that:

- The Legislature consider creating a separate U.S. L & H guaranty account to be administered by CIGA.
- The guaranty fund be used prospectively.
- A cap be included in the initial assessment.
- The assessment be passed on to U.S. L & H insured employers only.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Background

In California, approximately two-thirds of the total payroll in the state has been covered for workers' compensation through insurance policies, while the remainder is through self-insurance. There are more than 100 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (SCIF).

These insurers are overseen by the California Department of Insurance (CDI). To accomplish its principal objective of protecting insurance policy holders in the state, the CDI examines insurance companies to ensure that operations are consistent with the requirements of the Insurance Code.

Minimum Rate Law and Open Rating

In 1993, the workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it beginning in 1995 with an open-competition system of rate regulation in which insurers set their own rates based on "pure premium advisory rates" developed by the Workers' Compensation Insurance Rating Bureau (WCIRB). These rates, approved by the Insurance Commissioner (IC) and subject to annual adjustment, are based on historical loss data for more than 500 job categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates that are intended to cover other costs and expenses, including unallocated loss-adjustment expenses.

Insurance Market After Elimination of Minimum Rate Law

Subsequent to the repeal of the minimum rate law effective January 1995, changes were noted in the actions of insurers and employers.

Price Competition

While declining claim costs and the mandated premium rate reductions initiated the decline in the total California workers' compensation premium, open rating apparently spurred competition among insurers seeking to retain or add to their market share. Some insurers attempted to increase their market share by writing coverage at low prices that eventually proved to be below loss costs. This deregulated market kept premium rates near their historic lows throughout the latter half of the 1990's, even though losses were no longer declining.

As the link between the price of insurance and loss costs became more and more tenuous, some insurers left the state, others ceased writing workers' compensation or were merged or acquired by other carriers, and still others, including several of the largest insurers in the State, became insolvent and had to be taken over or supervised by the state. As a result, the workers' compensation market became much more concentrated than in the past, with only a few insurers, aside from SCIF, which were mostly large, national carriers, accounting for the largest portion of statewide premium.

Changing Insurers

WCIRB estimated that before open rating, about 25 percent of California employers with experience modifications (ex-mods) changed insurance carriers each year. After open rating, about 35 percent of the employers did so. However, in many post-open rating situations, employers had no choice but to change insurers, as the market had deteriorated to the point that many carriers, including several of the largest workers' compensation insurers in the State, ceased to exist or stopped writing workers' compensation in California.

Reinsurance

After open rating, many carriers shifted the risk of their workers' compensation claims to other insurance companies, some of which were inexperienced with the California workers' compensation insurance market. It was reported that many carriers used reinsurance aggressively in order to mitigate the risk of having to make large future payoffs. Some primary workers' compensation carriers offered extremely low rates that proved to be inadequate in the face of soaring losses. Some reinsurance companies also sold off their risk to other reinsurers in a process called "retrocession." During 1999, several major reinsurance pools experienced financial difficulty and ceased operations.

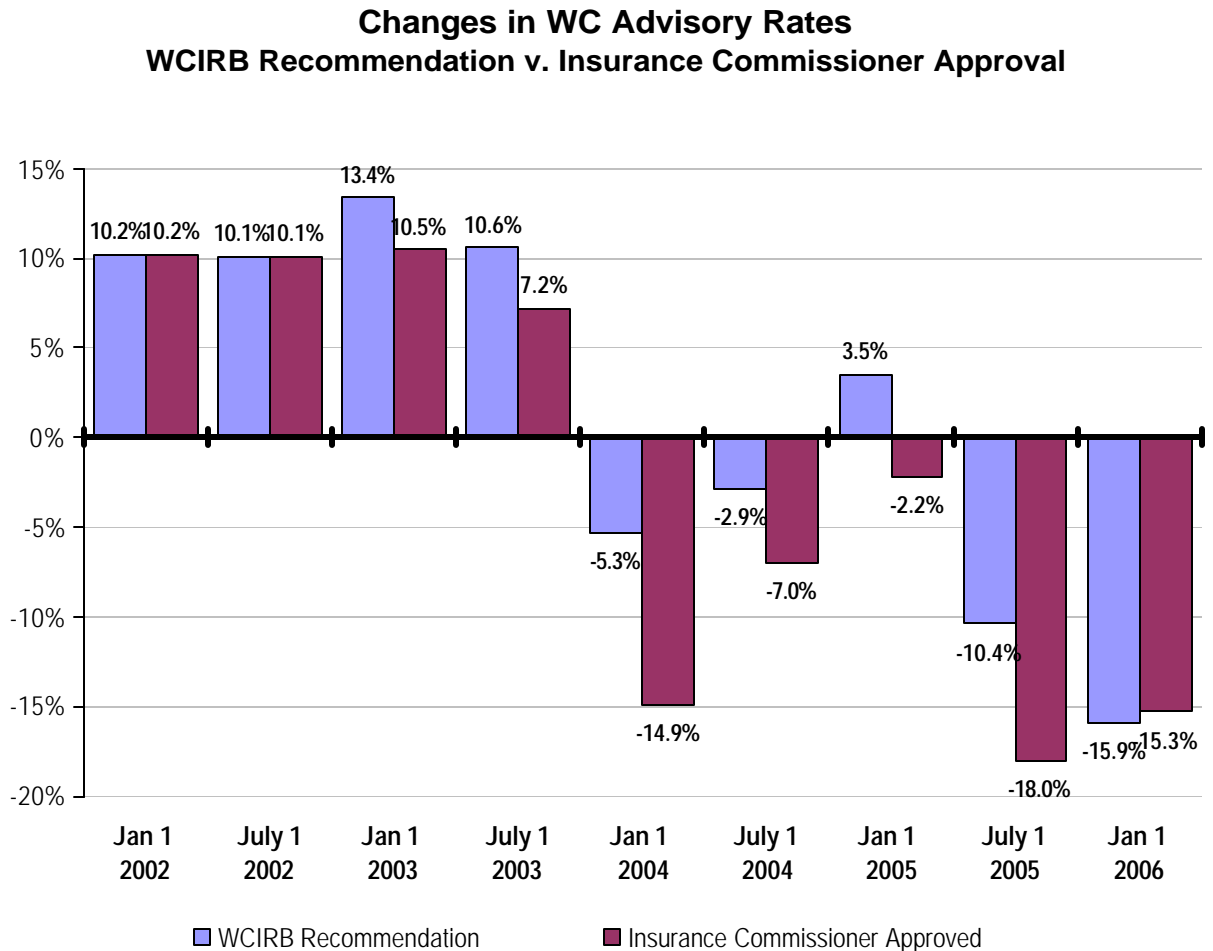
Impact of Recent Workers' Compensation Reforms on Insurance Companies

The workers' compensation reform legislation, Senate Bill (SB) 228, Assembly Bill (AB) 227, and SB 899, were enacted with the intent of controlling costs and improving the benefit delivery process in the workers' compensation system.

As a result of the reforms, WCIRB recommended and the IC approved decreases in the pure premium advisory rates, as shown on the following chart in 2003 and 2004. (A history of pure premium rates appears later in this section.)

Recommended vs. Approved Advisory Workers' Compensation Rates

The chart below shows both the WCIRB-recommended and IC-approved changes to the workers' compensation advisory premium rate.



California Workers' Compensation Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the IC on advisory premium rates, workers' compensation insurers have reduced their filed rates as indicated in the chart below.

As of July 1, 2005, the cumulative premium weighted average rate reduction filed with the CDI is 26.78 percent for all insurers including SCIF. There have been four rate reductions since the passage of AB 227 and SB 228, and individually stated, filed rates were reduced 3.6 percent on January 1, 2004, 7.3 percent on July 1, 2004, 3.8 percent on January 1, 2005, and 14.6 percent on July 1, 2005.⁴⁰

⁴⁰ Source: Douglas G. Barker, J.D., Bureau Chief, California Department of Insurance Rate Filing Bureau.

The WCIRB reports that actual rates charged in the market place, as of September 30, 2004, had fallen by 16 percent since the enactment of AB 227 and SB 228. The average rate per \$100 of payroll fell from \$6.35 in the second half of 2003 to \$5.34 in the third quarter of 2004. When the WCIRB average rate data is updated through the third quarter of 2005, it is expected to mirror the 26.5 percent reduction in filed rates for the same period.

California Workers' Compensation Insurance Carrier Rate Filing Changes

COMPANY NAME	GROUP NAME	Market share 2004	Cumulative % Change as of 1/1/05	07/01/ 2005 % Filed Rate Change	01/01/ 2005 % Filed Rate Change	07/01/2004 % Filed Rate Change	01/01/2004 % Filed Rate Change
STATE COMPENSATION INSURANCE FUND		51.04%	-26.22%	-14.00%	-5.00%	-7.00%	-2.90%
ZENITH INSURANCE COMPANY	Zenith National Group	4.51%	-21.99%	-12.00%	-1.50%	-10.00%	0.00%
EVEREST NATIONAL INSURANCE COMPANY	Everest Group	3.09%	-21.43%	-13.80%	-1.50%	-7.00%	-0.50%
AMERICAN HOME ASSURANCE COMPANY	AIG Group	2.86%	-26.02%	-15.10%	-2.40%	-7.00%	-4.00%
ZURICH AMERICAN INSURANCE COMPANY	Zurich Insurance Group	2.42%	-40.29%	-22.70%	-6.40%	-10.00%	-8.30%
VIRGINIA SURETY COMPANY, INC.	Aon Corporation	1.97%	-21.69%	-18.00%	-2.20%	-7.00%	5.00%
COMMERCE AND INDUSTRY INSURANCE COMPANY	AIG Group	1.78%	-26.02%	-15.10%	-2.40%	-7.00%	-4.00%
EMPLOYERS COMPENSATION INSURANCE COMPANY	Employers Group	1.72%	-33.54%	-18.60%	-5.50%	-11.30%	-2.60%
REPUBLIC INDEMNITY COMPANY OF CALIFORNIA	Great American Group	1.66%	-41.95%	-25.00%	-2.20%	-7.00%	-14.90%
FEDERAL INSURANCE COMPANY	Chubb Group	1.32%	-21.42%	-12.10%	.40%	-3.00%	-8.20%

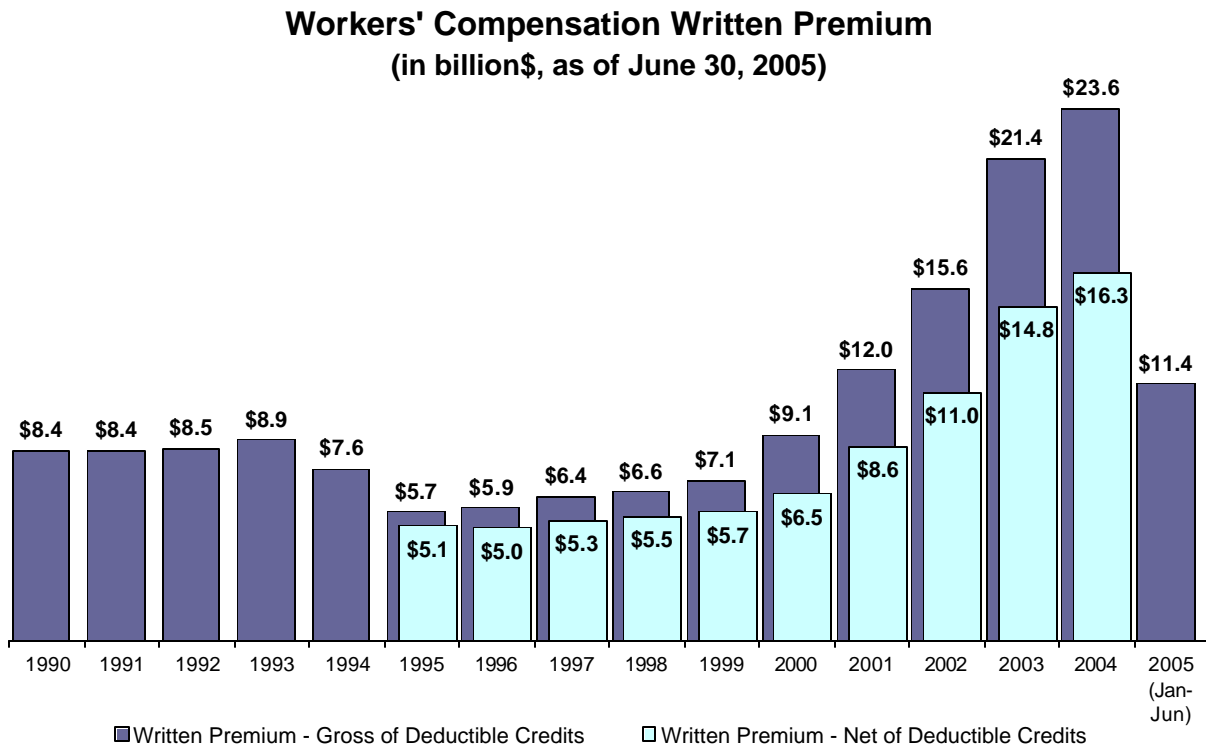
The recent workers' compensation rate filing changes noted above could be one of the signs that the workers' compensation insurance market is becoming more stable and competitive.

Workers' Compensation Premiums

After elimination of the minimum rate law, the total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth and movement from self-insurance to insurance and other factors, rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the decade.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The total written premium has increased by 37.2 percent to \$21.4 billion from 2002 to 2003 and to \$23.6 billion from 2002 to 2004.

The chart below shows the California workers' compensation written premium before and after the application of deductible credits. Please note that these amounts are exclusive of dividends.



Data Source: WCIRB

**Advisory Workers' Compensation Rates:
A History Since the 1993 Reform Legislation
Part One: 1993 – 2001**

1993

Insurance Commissioner approval:

Pure premium rate reduction of 7 percent effective July 16, 1993, due to a statutory mandate.

1994

WCIRB recommendation:

No change in pure premium rates.

Insurance Commissioner approval:

Two pure premium rate decreases: a decrease of 12.7 percent effective January 1, 1994; and a second decrease of 16 percent effective October 1, 1994.

1995

WCIRB recommendation:

A 7.4 percent decrease from the pure premium rates that were in effect on January 1, 1994.

Insurance Commissioner approval:

A total of 18 percent decrease to the premium rates in effect on January 1, 1994, approved effective January 1, 1995 (including the already-approved 16 percent decrease effective October 1, 1994).

1996

WCIRB recommendation:

An 18.7 percent increase in pure premium rates.

Insurance Commissioner approval:

An 11.3 percent increase effective January 1, 1996.

1997

WCIRB recommendation:

A 2.6 percent decrease in pure premium rates.

Insurance Commissioner approval:

A 6.2 percent decrease effective January 1, 1997.

1998

WCIRB recommendation:

The initial recommendation for a 1.4 percent decrease was later amended to a 0.5 percent increase.

Insurance Commissioner approval:

A 2.5 percent decrease effective January 1, 1998.

1999

WCIRB recommendation:

The WCIRB initial recommendation of a 3.6 percent pure premium rate increase for 1999 was later amended to a recommendation for a 5.8 percent increase.

Insurance Commissioner approval:

No change in pure premium rates in 1999.

2000

WCIRB recommendation:

An 18.4 percent increase in the pure premium rate for 2000.

Insurance Commissioner approval:

An 18.4 percent increase effective January 1, 2000.

2001

WCIRB recommendation:

The WCIRB initial recommendation of a 5.5 percent increase in the pure premium rate later amended to a recommendation for a 10.1 percent increase.

Insurance Commissioner approval:

A 10.1 percent increase effective January 1, 2001.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation
Part Two: 2002 - 2004**

2002

WCIRB Recommendations:

The WCIRB initial recommendation of a 9 percent increase in the pure premium rate later amended to a recommendation for a 10.2 percent increase. WCIRB filed a mid-term recommendation that pure premium rates be increased by 10.1 percent effective July 1, 2002, for new and renewal policies with anniversary rating dates on or after July 1, 2002.

Insurance Commissioner Approvals:

A 10.2 percent increase effective January 1, 2002. On May 20, 2002, the Insurance Commissioner approved a mid-term increase of 10.1 percent effective July 1, 2002.

2003

WCIRB recommendation:

The WCIRB initial recommendation of 11.9 percent was later amended. WCIRB filed a mid-term recommendation on April 2, 2003, that pure premium rates be increased by 10.6 percent effective July 1, 2003, for new and renewal policies with anniversary rating dates on or after July 1, 2003.

Insurance Commissioner Approval:

A 7.2 percent increase in pure premium rates applicable to new and renewal policies with anniversary rating dates on or after July 1, 2003.

2004

WCIRB Recommendations:

On July 30, 2003, WCIRB proposed an average increase in advisory pure premium rates of 12.0 percent to be effective on January 1, 2004, for new and renewal policies with anniversary rating dates on or after January 1, 2004.

The original WCIRB filing of an average increase of 12 percent on July 30, 2003, was later amended on September 29, 2003, to -2.9 percent to reflect the WCIRB's initial evaluation of AB 227 and SB 228.

In an amended filing made on November 3, 2003, the WCIRB recommended that pure premium rates be reduced, on average, from 2.9 percent to 5.3 percent.

On May 13, 2004, WCIRB proposed advisory pure premium rates that are approximately 13 percent to 15 percent less than the January 1, 2004, pure premium rates proposed by the WCIRB in its November 3, 2003, filing letter and represent a 2.9 percent decrease from the January 1, 2004, approved pure premium rates. These rates reflect the WCIRB's analysis of the impact of provisions of SB 899 on advisory pure premium rates.

On July 28, 2004, the WCIRB proposed advisory premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005, that are, on average, 3.5 percent greater than the July 1, 2004, advisory pure premium rates approved by the Insurance Commissioner.

Insurance Commissioner Approvals:

In a decision issued November 10, 2003, the Insurance Commissioner approved a total decrease of 14.9 percent in the workers' compensation pure premium rates that have been in effect since July 1, 2003. These rates will be applicable to new and renewal policies with anniversary rating dates on or after January 1, 2004.

In a decision issued May 28, 2004, the Insurance Commissioner approved a total decrease of 20.9 percent in the workers' compensation pure premium rate effective July 1, 2003, compared to a proposed 17.4 percent decrease filed by the WCIRB.

The Commissioner approved pure premium rates, effective July 1, 2004, with respect to new and renewal policies, reflecting a 7.0 percent decrease as compared to the approved January 1, 2004, pure premium rates.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation
Part Three: 2005 - 2006**

2005

WCIRB Recommendations:

On July 28, 2004, the WCIRB proposed advisory premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005, that are, on average, 3.5 percent greater than the July 1, 2004, advisory pure premium rates approved by the Insurance Commissioner.

On March 25, 2005, WCIRB submitted a filing to the California Insurance Commissioner recommending a 10.4 percent decrease in advisory pure premium rates effective July 1, 2005, on new and renewal policies.

On May 19, 2005, in recognition of the cost impact of the new Permanent Disability Rating Schedule adopted pursuant to SB 899, the WCIRB amended its recommendation. In lieu of the 10.4 percent reduction originally proposed in March, the WCIRB recommended a 13.8 percent reduction in pure premium rates effective July 1, 2005. In addition, the WCIRB recommended a 3.8 percent reduction in the pure premium rates effective July 1, 2005, with respect to the outstanding portion of policies incepting January 1, 2005, through June 30, 2005.

Insurance Commissioner Approvals

In a decision issued November 17, 2004, the Insurance Commissioner approved a total 2.2 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005.

In a Media Statement issued on June 1, 2005, the Insurance Commissioner announced that he would recommend an 18 percent decrease in the pure premium rate for policies incepting on or after July 1, 2005.

On June 1, 2005, the Insurance Commissioner approved an 18 percent decrease in advisory pure premium rates effective July 1, 2005, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2005. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$23,288. The Insurance Commissioner also approved a 7.9 percent decrease in pure premium rates, effective July 1, 2005, applicable to policies that are outstanding as of July 1, 2005. The reduction in pure premium rates applicable to these policies reflects the estimated impact on the cost of benefits of the new Permanent Disability Rating Schedule.

2006

WCIRB Recommendations:

On July 28, 2005, the WCIRB submitted a Regulatory Filing to the California Department of Insurance recommending an average 5.2 percent decrease in advisory pure premium rates to be effective on policies incepting on or after January 1, 2006. In addition to pure premium rate changes, the WCIRB proposed a number of changes to the standard classification system and changes to several components of the experience rating formula contained in the California Workers' Compensation Experience Rating Plan. These changes are also proposed to be effective January 1, 2006.

On September 16, 2005, the WCIRB submitted an amended rate filing for a 15.9 percent decrease in the pure premium rate for policies incepting on or after January 1, 2006.

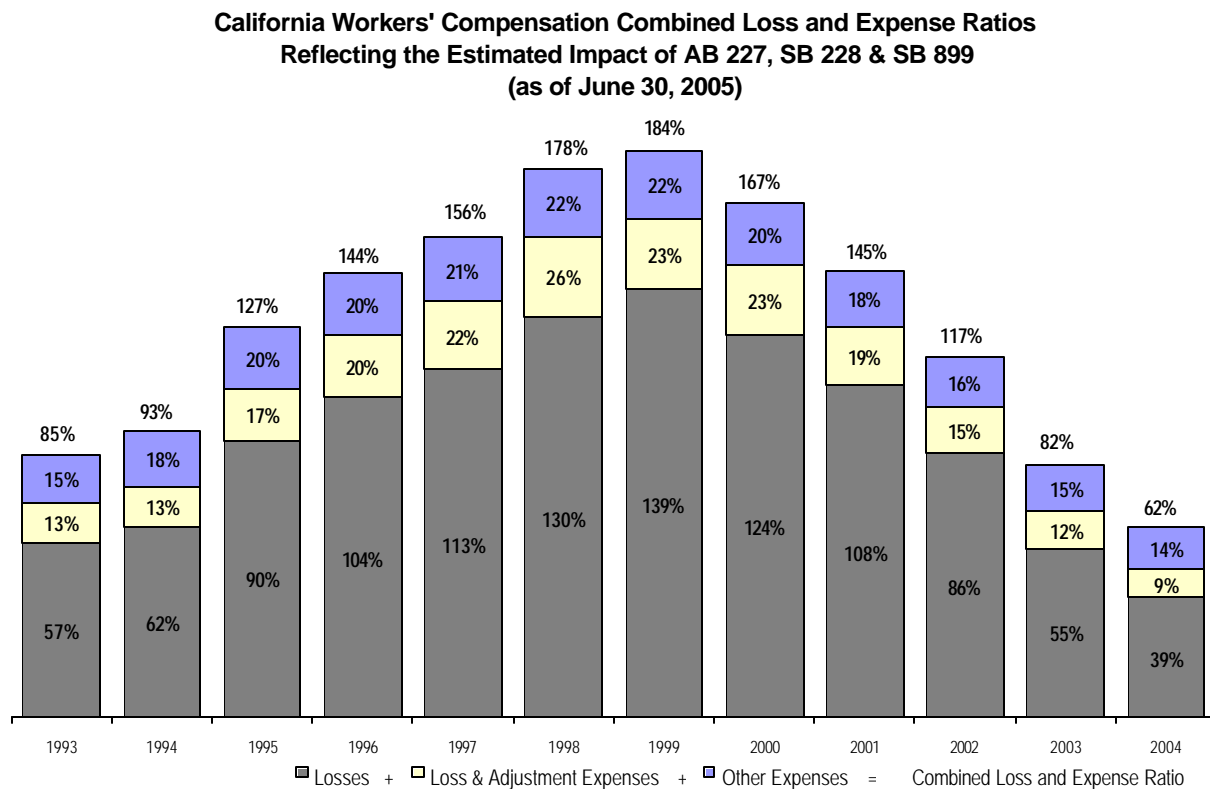
Insurance Commissioner Approvals

In a decision issued November 10, 2005, the Insurance Commissioner approved an average 15.3 percent decrease in advisory pure premium rates effective January 1, 2006, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2006. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$20,300.

(See the WCIRB website at www.wcirbonline.org for updates.)

Combined Loss and Expense Ratios

The accident-year combined loss and expense ratio, which measures workers' compensation claims payments and administrative expenses against earned premium, increased during the late 1990's and has been declining since that time. In accident-year 2004, insurers' claim costs and expenses amounted to \$0.62 for every dollar of premium they collected, which is the lowest combined ratio projected by WCIRB since the inception of competitive rating and reflects the estimated impact of AB 227, SB 228, and SB 899 on unpaid losses.



Under-reserving

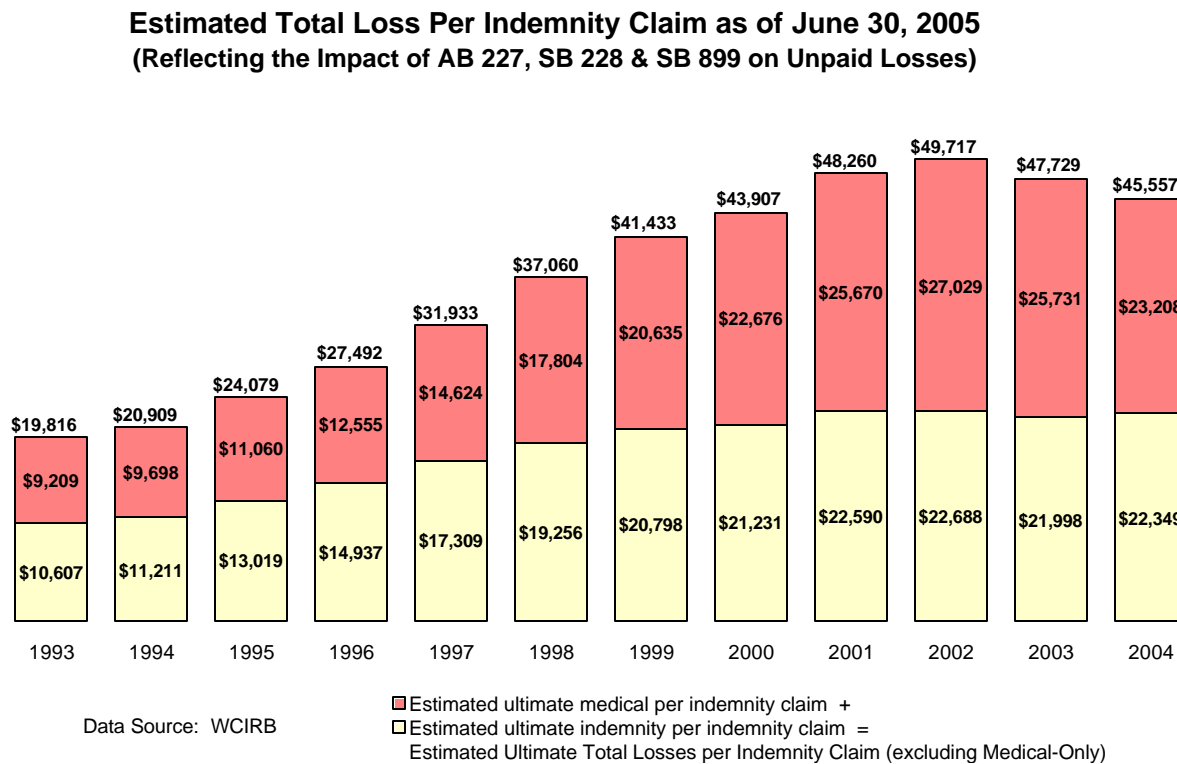
WCIRB estimates that the total cost of benefits on injuries occurring prior to January 1, 2005, exceeds insurer-reported loss amounts by \$2 billion. This figure, which may be symptomatic of reserve deficiencies for 2004, is down about 85 percent from 2001 peak levels.

Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply due to increases in the average cost of an indemnity claim, which rose dramatically during the late 1990's. According to WCIRB, the average cost of

indemnity claim has grown at about 10 percent since 1994, which is above the level of general and medical inflation.

However the average medical losses have dropped by about 10 percent from 2003 to 2004 reflecting the impact of AB 227, SB228 and SB 899. The total average cost of indemnity claims has also decreased from 2002 to 2004.



Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

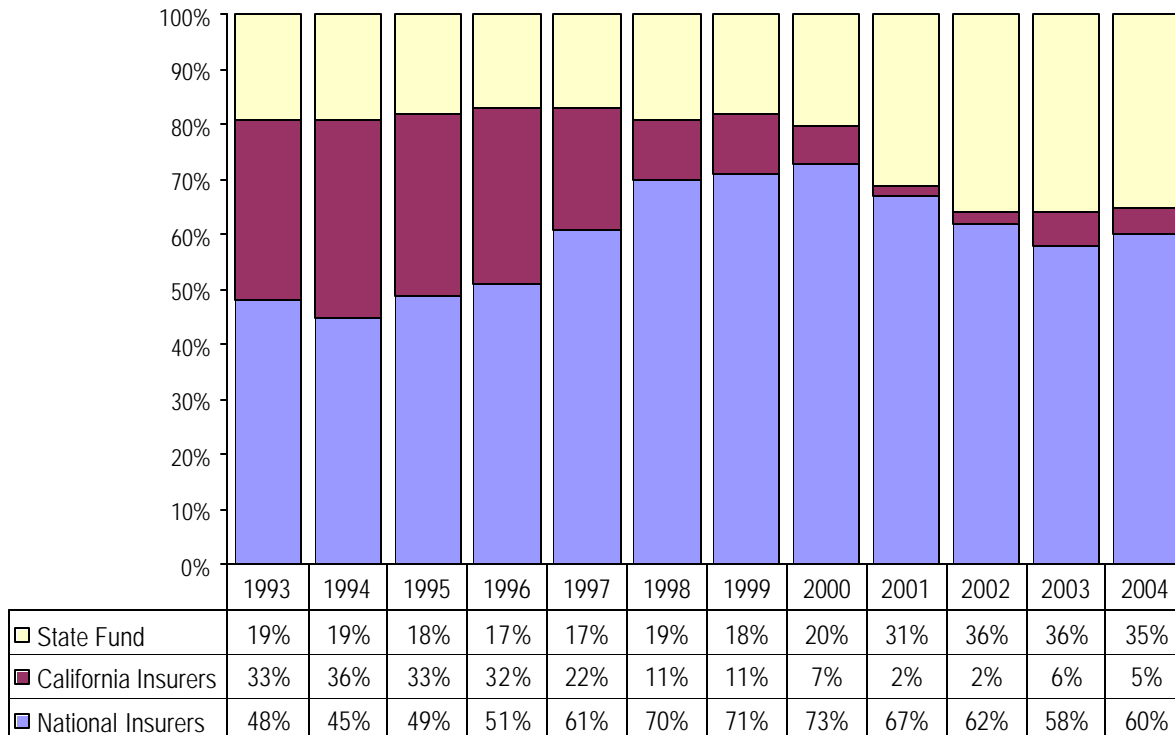
Current State of the Insurance Industry

Market Share

A number of California insurers left the market or reduced their writings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993, as shown in the following chart.

According to WCIRB, California companies (excluding SCIF) insured just 5 percent of the California workers' compensation market in 2004, compared with 36 percent of the market in 1994. From 2002 through 2004, SCIF attained about 35 percent of the California workers' compensation insurance market, double the market share it had in the 1990's.

WC Insurance Market Share in California by Type of Insurer
Based on Written Premium Prior to Deductible Credits



Source: WCIRB

Please note that totals may not equal 100% due to rounding

"California Insurers" are defined as private insurers who write at least 80% of their workers' compensation business in California

"September 11" Impact on Insurance Industry

The recent problems in the reinsurance market caused by the events of September 11, 2001, have significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, have a significant effect on the cost of workers' compensation insurance. This effect extends to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace.

Insurance Market Changes

Since 2000, a significant number of workers' compensation insurance companies have experienced problems with payment of workers' compensation claims. Twenty-nine insurance companies have gone under liquidation and eight companies have withdrawn from offering workers' compensation insurance during that time. However, since 2004, seven insurance/reinsurance companies have entered the California workers' compensation market, while only two companies withdrew from the market and two companies were liquidated.

COMPANY NAME

DATE OF LIQUIDATION

2000

California Compensation Insurance Company	9/26/2000
Combined Benefits Insurance Company	9/26/2000
Commercial Compensation Casualty Insurance Company	9/26/2000
Credit General Indemnity Company	12/12/2000
LMI Insurance Company	5/23/2000
Superior National Insurance Company	9/26/2000
Superior Pacific Insurance Company	9/26/2000

2001

Credit General Insurance Company	1/5/2001
Great States Insurance Company	5/8/2001
HHH America Compensation & Liability Insurance Company	5/8/2001
Amwest Surety Insurance Company	6/7/2001
Sable Insurance Company	7/17/2001
Reliance Insurance Company	10/3/2001
Far West Insurance Company	11/9/2001
Frontier Pacific Insurance Company	11/30/2001

2002

PHICO	2/1/2002
National Auto Casualty Insurance Company	4/23/2002
Paula Insurance Company	6/21/2002
Alistar Insurance Company	11/2/2002
Consolidated Freightways	9/2002

2003

Western Growers Insurance Company	1/7/2003
Legion Insurance Company	3/25/2003
Villanova Insurance Company	3/25/2003
Home Insurance Company	6/13/2003
Fremont General Corporation	7/2/2003
Wasatch Crest Insurance Co. (No WC policies)	7/31/2003
Pacific National Insurance Co.	8/5/2003

2004

Casualty Reciprocal Exchange	8/18/04
Protective National Insurance Company	2/12/04

WORKPLACE SAFETY AND HEALTH

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

High Hazard Employer Program

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to these employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

In 1999, the passage of Assembly Bill (AB) 1655 gave the Department of Industrial Relations (DIR) the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis.

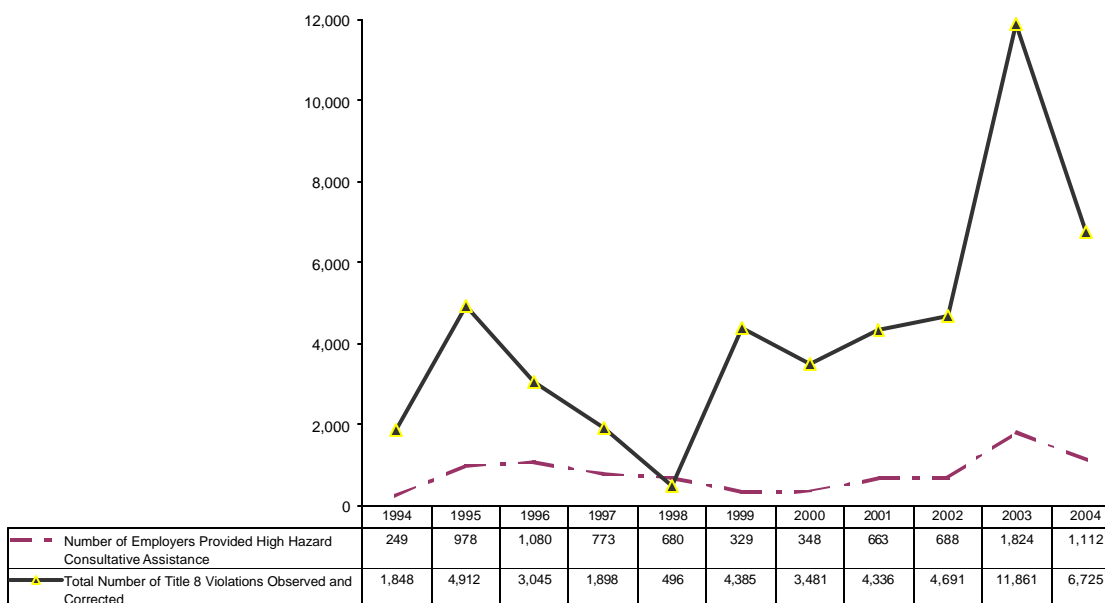
High Hazard Consultation Program

The Division of Occupational Safety and Health (DOSH) reports that in 2004, it provided on-site high hazard consultative assistance to 1,112 employers, as compared to 1,824 employers in 2003. During consultation with these employers, 6,725 Title 8 violations were observed and corrected as a result of the provision of consultative assistance. Since 1994, 8,724 employers have been provided direct on-site consultative assistance, and 42,863 Title 8 violations have been observed and corrected.

The following chart indicates the yearly number of consultations and violations observed and corrected during the years 1994-2004. It should be noted that effective 2004, the Safety and Health Inspection Projects (SHIPs) are included in the High Hazard Consultation Program figures.

WORKPLACE SAFETY AND HEALTH

High Hazard Consultation Program Production by Year



Data Source: Division of Occupational Safety and Health

Beginning in 2000, the efficacy of high hazard consultative assistance is assessed through measurement of a high hazard employer's Lost Work Day Case Incidence (LWDI) Rate and an employer's Experience Modification Rating (ex-mod).

High Hazard Enforcement Program

DOSH reports that in 2004, 390 employers underwent a high hazard enforcement inspection, down from 445 employers in 2003. During these inspections in 2004, 2,055 violations were observed and cited, whereas in 2003, 2,129 violations were observed and cited.

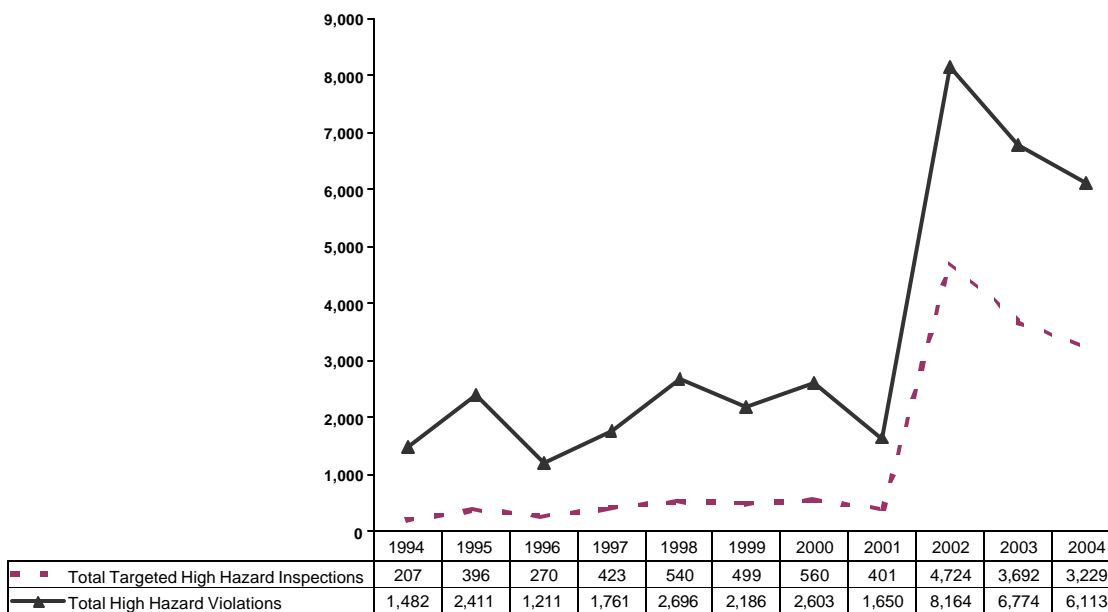
In addition, in 2004, 2,839 additional employers underwent an inspection as part of the Construction Safety and Health Inspection Project (CSHIP). During these inspections, 4,058 violations were observed and cited.

Since 1994, 14,941 employers have undergone a high hazard enforcement inspection, and 37,051 Title 8 violations have been observed and cited. Of these violations, 37.5 percent were classified as "serious."

The chart below indicates the yearly number of targeted inspections and violations observed and cited during the years 1994-2004. It should be noted that effective 2002, the Construction Safety and Health Inspection Projects (CSHIPs) are included in the High Hazard Enforcement Program figures.

WORKPLACE SAFETY AND HEALTH

High Hazard Enforcement Program Inspections and Violations



Data Source: Division of Occupational Safety and Health

Beginning in 2002, the efficacy of high hazard enforcement is assessed through measurement of a high hazard employer's LWDI. This provides for the same LWDI efficacy methodology being used for both high hazard consultation and enforcement.

For further information...



Additional information can be obtained by visiting the Cal/OSHA website at www.dir.ca.gov/DOSH or by e-mailing your questions or requests to InfoCons@dir.ca.gov.

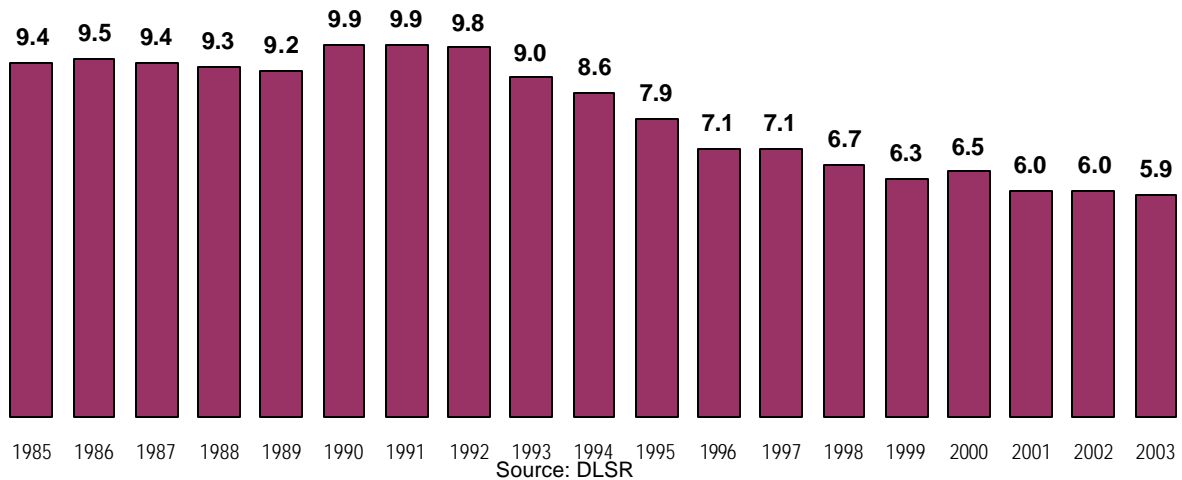
Non-fatal Injury and Illness Rates in California

From 1990 to 2002, the injury and illness rates in California declined from a high of 9.9 cases per 100 employees in 1990 and 1991 to 5.9 cases per 100 employees in 2003.

This improvement has been attributed to a number of factors, including shifts in the workforce, greater emphasis on workplace safety, continued efforts to combat workers' compensation fraud, and changes in employer reporting patterns.

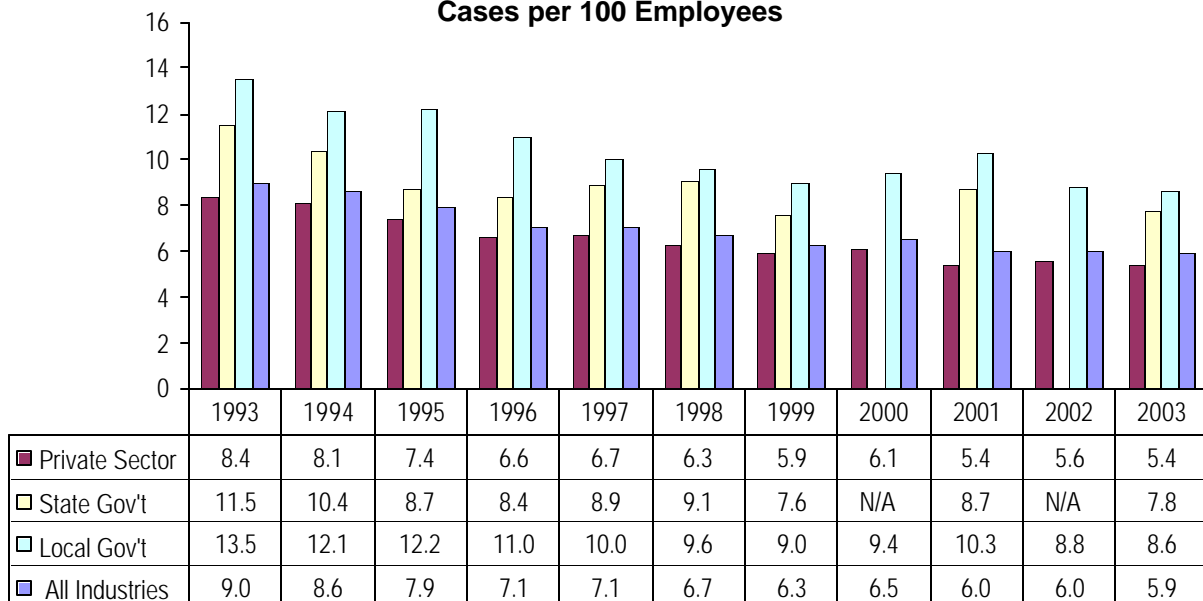
WORKPLACE SAFETY AND HEALTH

OSHA Injury and Illness Rates in California 1985-2003 (Cases per 100 Employees)



As shown on the following chart, the injury and illness rates for the public and private sectors are also declining.

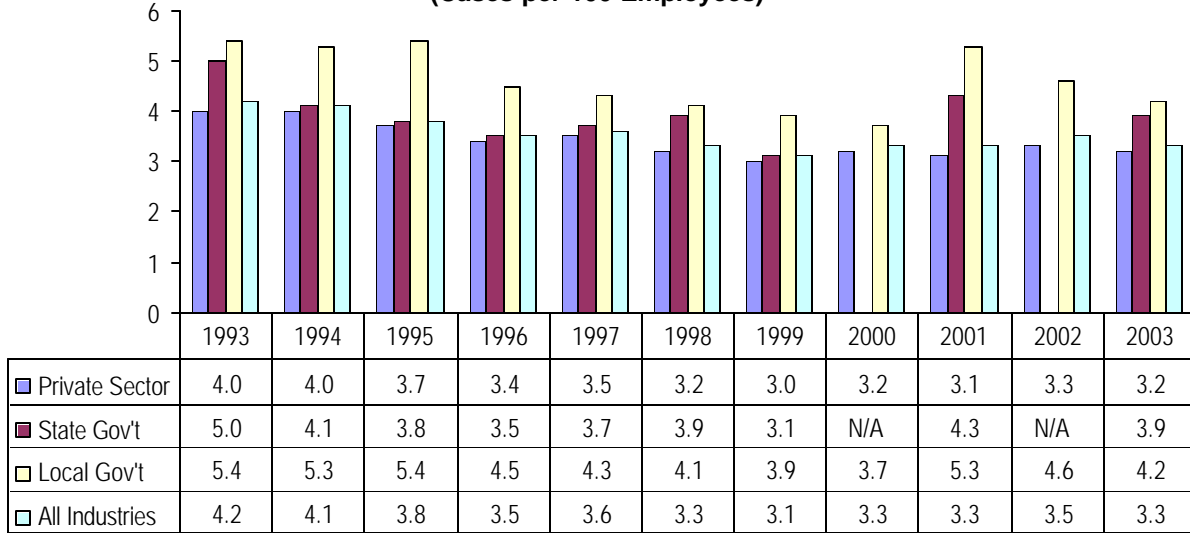
Occupational Injury and Illness Rates in California by Sector Cases per 100 Employees



WORKPLACE SAFETY AND HEALTH

Overall, lost-time injury rates have declined from 1993 to 1999, increased from 2000 to 2002, and declined in 2003.

Lost Time Injury and Illness Rates in California
(Cases per 100 Employees)

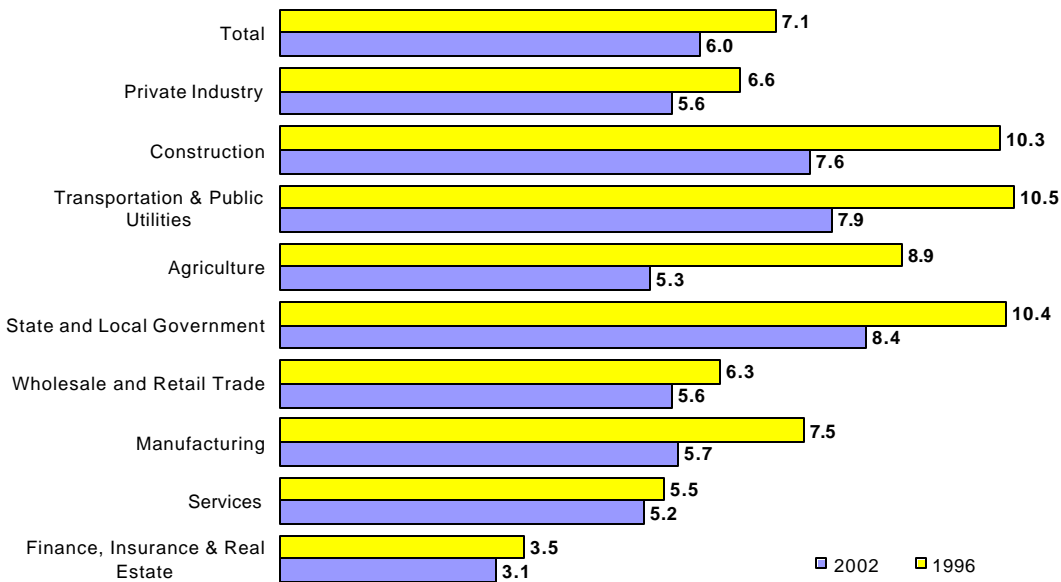


Source: DLSR

Non-fatal Occupational Injuries and Illness Days-away-from-work Rates by Industry

Injury and illness days-away-from-work rates in all industries declined between 1996 and 2002.

Injury Rates by Industry 2002 v 1996



Source: Division of Labor Statistics and Research

Profile of Injury and Illness Statistics

Data for the following analyses, except where noted, were derived from the Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR), from the United States Department of Labor (DOL) Bureau of Labor Statistics (BLS) and from the California Workers' Compensation Institute (CWCI).

California and the Nation

Incidence Rates

California's most recent work injury and illness statistics (2003) indicate an injury and illness rate of 5.4 cases per 100 full-time employees in the private sector in 2003. This is a 43 percent decline from the 1990 peak level of 9.4 and an estimated 3.6 percent increase from the previous year's figures.

The above trend in California mirrors a national trend. DOL figures for private employers show that from 1990 to 2003, the work injury and illness rate across the U.S. fell from 8.8 to 5.0 cases per 100 employees in the private sector. The reduction in the number of incidences of job injuries is likely due to various factors including a greater emphasis on job safety, the improving economy since the early 1990's, and the shift from manufacturing toward service jobs.

From the Western region states (Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington), California's 2002 private-industry rate of 5.4 for non-occupational injuries and illnesses is the second lowest.⁴¹ The state with the lowest incidence rate of 4.6 in 2003 was Arizona. Another state that had the second-lowest incidence rate was Hawaii.

Duration

Days-away-from-work cases, including those that result in days away from work with or without a job transfer or restriction, dropped from 2.1 to 1.7 cases per 100 full-time employees from 1996 to 2003 in the private sector. This also mirrors the national trend with the number of days-away-from-work cases falling from 2.2 to 1.5 cases in the national private sector with a similar decline as that of California.

In "State Report Cards for Workers' Compensation," published by the Work Loss Data Institute, the Institute reported that the median days away from work in California and New York is 8 days, compared with the national average of 6 days.⁴²

Industry Data

- In 2003, injury and illness incidence rates varied greatly between private industries ranging from 2.8 injuries/illnesses per 100 full-time workers in the financial activities sector to 7.8 in construction. California's private industry rates for total cases were higher than the national rates in every major industry division, except for manufacturing, and in natural resources and mining.

⁴¹ The comparisons of industry rates have not been adjusted for industry mix within each state.

⁴² http://www.odg-disability.com/pr_repsrc.htm

- The private-industry total-case rate for non-fatal injuries decreased between 2002 and 2003 from 5.6 to 5.4 and the rate for the public sector (state and local government) did not change in 2003 from 8.4 in 2002.
- Over the past decade (1993-2003), the number of fatal injuries declined by about 31 percent, from 664 to 456. The number of fatal injuries declined by 30 percent since 1997 and continued to decrease in 2003 to 456 fatalities. From 2002 to 2003 the number of fatal injuries decreased by 4.6 percent. The highest number of fatal injuries was in trade, transportation and utilities, closely followed by construction.
- In private industry, the top ten occupations with the most non-fatal injuries and illnesses in descending order are: laborers and freight, stock, and material movers; retail sales persons, truck drivers, heavy and tractor-trailer; janitors and cleaners, except maids and house-keeping cleaners; construction laborers; carpenters; farmworkers and laborers, crop, nursery, and greenhouse; maintenance and repair workers, general; truck drivers, light or delivery services; nursing aides, orderlies, and attendants.
- In the state government the top ten occupations with the most non-fatal injuries and illnesses are correctional officers and jailers; police and sheriff's patrol officers; office clerks, general; psychiatric technicians, registered nurses; janitors and cleaners, except maids and housekeeping cleaners, medical assistants; first-line supervisors/managers of correctional officers, medical and health services managers; maintenance and repair workers, general.
- In the local government, the top ten occupations with the most non-fatal injuries and illnesses are police and sheriff's patrol officers; janitors and cleaners except maids and house-keeping; elementary school teachers, except special education; teacher assistants, fire fighters; bus drivers, transit and intercity; maintenance and repair workers, general; landscaping and grounds-keeping workers; food servers, non-restaurant; office clerks, general.
- Truck drivers, construction laborers, farm workers, ground maintenance workers and police officers were the occupations with the most number of fatal injuries in 2003. Transportation accidents were the number one cause of fatal injuries accounting for about 38 percent of fatal injuries in 2003.
- Assaults and violent acts accounted for about 18 percent of fatal injuries in 2003 and are a major cause of fatalities among sales and related occupations; transportation and material moving occupations; protective service occupations; installation, maintenance and repair
- California agriculture has the fourth-highest incidence rate for fatal injuries. The major cause for fatalities in agriculture is motor vehicles, accounting for 47 percent of the total, while the major causes for non-fatal injuries in this industry are "struck by" and "overexertion," which together account for over 50 percent.⁴³

Non-fatal and Fatal Occupational Injuries by Establishment Size and Type

- The lowest rate for the total recordable non-fatal cases in 2003 was experienced by the smallest employers. Employers with 1 to 10 employees and 11 to 49 employees had incidence rates of 2.1 and 4.6 cases, respectively, per 100 full-time employees. There was no change in incidence rates for employers with 1 to 10 employees. For Employers with 11 to 49 employees there was a slight 4 percent decrease in incidence rates compared to 2002.

⁴³ California Occupational and Environmental Health Division, UC Berkeley.

WORKPLACE SAFETY AND HEALTH

- Establishments with 250 to 999 and 1000 or more employees reported the highest rate of 7.3 and 7.0 cases per 100 full-time employees. Establishments with 1000 or more employees are the only establishments that had an increase in incidence rates, 4.5 percent, compared to 2002.
- Establishments with 50 to 249 employees reported a rate of 6.8 per 100 full-time employees.
- Private-sector wage and salary workers accounted for 74 percent of fatal occupational injuries, followed by self-employed and government workers accounting for about 16 percent and 10 percent, respectively, of fatal injuries in 2003.

Types of Injuries

- Some types of work injuries have declined since 1997 in the private sector, while others have increased. The number of sprains and strains continued to decline from 1997, but these injuries remain by far the most common type of work injury accounting for about 41 percent of days-away-from-work cases in the private sector. Cuts, lacerations, heat burns; carpal tunnel syndrome; tendonitis, chemical burns, amputations, and multiple injuries have decreased from 1997-2003, with the biggest decrease, 60 percent, seen in tendonitis. From 1997 to 2003 the only injury categories that experienced an increase are bruises, contusions and fractures.
- In the private sector, contact with objects and equipment was the leading cause of days-away-from-work injuries, cited in about 23.6 percent of days-away-from-work cases. Overexertion was the second common cause of injury, accounting for about 22 percent of injuries.
- In the local and state government, the number one cause of injury was overexertion accounting for about 20 percent and 16 percent of days away from work cases in 2003 respectively.
- The back is still the most frequently injured body part, accounting for about 16 percent of the cases in the state government and about 20 percent cases in the local government. In the private sector the back injuries account for 24 percent of non-fatal cases.

Demographics

- Over the period from 1997 to 2003 in California, the number of days-away-from-work cases for women decreased by about 3.5 percent. Days-away-from-work cases for men decreased by about 15 percent.
- Between 1997 and 2003 in California, the age groups (20 to 24, 25 to 34, 35 to 44 and 65 and over) experienced a decline. (The biggest decline (21 percent) occurred among 25 to 34 year-old workers). All other age groups (16 to 19, 45 to 54, 55 to 64) experienced an increase in their days-away-from-work rates, with the biggest increase (18 percent) seen in the 55 to 64 and over age group.
- In 2003, out of 456 fatalities, approximately 92 percent were male and 8 percent were female. Some age group categories – 18 to 19 years, 35 to 44 years, 65 years and over – experienced a decline in fatal injuries between 2002 and 2003, while others – 20 to 24 years and 25 to 34 years – experienced an increase. The biggest decline (48 percent) was seen in the 65 years and over age group and the biggest increase (36 percent) in the 20 to 24-year age group. The 55 to 64 age group did not experience an increase or a decline.

- The highest number of fatalities in 2003 by race or ethnic origin categories was experienced by “White, non-Hispanic” followed by “Hispanic or Latino,” accounting for 52 percent and 35 percent of the fatalities respectively. From 2002 to 2003, fatal injuries declined by 31 percent for the “Black, non-Hispanic” and by 9 percent for the “Hispanic or Latino.” Fatal injuries for the “White, non-Hispanic” and “Asian” categories remained the same since 2002.

Ergonomics Standard

California Standard

Assembly Bill (AB) 110, a part of the 1993 worker's compensation insurance legislative reform, added Section 6357 to the Labor Code, which required the Occupational Safety and Health Standards Board (OSHSB) to adopt a standard “to minimize instances of injury from repetitive motion” by January 1995. The Board adopted the standard in November 1996, and following approval by the Office of Administrative Law (OAL), California Code of Regulations (CCR), Title 8, Section 5110, repetitive motion injuries (RMIs) became legally enforceable on July 3, 1997. In October 1999, following protracted litigation, the California Court of Appeal upheld the regulation with one exception. Specifically, the court struck the regulatory exemption for employers with less than ten employees.

In 1999, AB 1127 added Labor Code Section 6719, which reads as follows: “The Legislature reaffirms its concern over the prevalence of repetitive motion injuries (RMIs) in the workplace and reaffirms the continuing duty to carry out Section 6357” of the OSHSB Board.

On April 28, 2000, the ergonomics standard became effective in California. In February 2001, prior to Congress repealing the federal standard, the California Labor Federation submitted a request to the Board to revise Section 5110 (Petition 430) to incorporate the elements of the Federal Ergonomics Program Standard, 29 CFR 1910.900. In July 2001, after considering this petition and the recommendations of DOSH and Board staff, the Board concluded that the federal model did not offer a sound approach for revising California's ergonomics standard and denied the petition.

In February 2002, AB 2845 was introduced to amend Section 6357 of the Labor Code to require the Board to adopt revised standards for ergonomics in the workplace designed to minimize instances of injury from repetitive motion by July 1, 2004. In August 2002, the California Labor Federation submitted another request to the Board to revise Section 5110 (Petition 448). In September 2002, former Governor Gray Davis vetoed AB 2845 to allow the Board time to consider Petition 448 and evaluate the existing regulation and the merits of amending it.

In February 2003, the Board directed its staff to convene an advisory committee to consider proposed revisions to Section 5110.

In April 2003, the Board and Division staff convened an advisory committee to consider proposed revisions to Title 8, Section 5110 on RMIs. The committee reviewed and considered each of the items that the committee was directed to address in the Board's Petition Decision regarding Petition 448. There was no consensus on proposed revisions to Section 5110. Furthermore, there was general agreement that another meeting of the same group may not be useful.

In May 2003, the Board was briefed on the results of the advisory committee on Petition 448. The Board members discussed the possibility of having another advisory committee meeting and asked staff to proceed.

In March 2004, the Board, with three new members and a new Chair, was briefed on the history of the ergonomics issue. In addition to the interest in getting background on the issue, the item was placed on the March agenda, based upon a question about convening another advisory committee. After the presentation, the Board members discussed the issue. No action was taken.

Federal Standard

In November 1999, the Federal Occupational Safety and Health Act (OSHA) introduced a proposed ergonomics standard, 29 CFR 1910.900, known as the Ergonomics Program Standard.

The federal standard was finalized in November 2000 and became effective on January 16, 2001. The standard was challenged in court with over 30 lawsuits.

In March 2001, Congress, for the first time, passed a Joint Resolution of Disapproval under the Congressional Review Act and repealed the federal standard on March 21, 2001.

The Joint Resolution was signed, and Federal OSHA notified the States of the cancellation of OSHA's requirement to adopt an Ergonomics Program Standard comparable to the federal standard.

On April 23, 2001, Federal OSHA published a notice in the Federal Register stating that the former 29 CFR 1910.900 was repealed as of that date.

Federal OSHA has announced a four-pronged approach to reducing ergonomic injuries:

- Industry-specific or task-specific guidelines;
- Enforcement under the general duty clause;
- Outreach and assistance; and
- Research

Ergonomics Standard in California: A Brief History

January 18 and 23, 1996

OSHSB holds public hearings on the proposed ergonomics standard and receives over 900 comments from 203 commenters. The proposed standards are revised.

July 15, 1996

OSHSB provides a 15-day public comment period on revisions to proposed standards.

September 19, 1996

OSHSB discusses the proposal at its business meeting and makes further revisions.

October 2, 1996

OSHSB provides a 15-day public-comment period on the further revisions.

November 14, 1996

OSHSB adopts the proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

January 2, 1997

OAL disapproves the proposed regulations based on clarity issues.

February 25, 1997

OSHSB provides a 15-day public-comment period on new revisions addressing OAL concerns.

April 17, 1997

OSHSB adopts the new revisions and resubmits the proposal to OAL.

June 3, 1997

Proposed ergonomics standard is approved by OAL.

July 3, 1997

Ergonomics standard becomes effective.

September 5, 1997

Sacramento Superior Court holds a hearing to resolve the legal disputes filed by labor and business industries.

October 15, 1997

Judge James T. Ford of the Sacramento Superior Court issued a Peremptory Writ of Mandate, Judgment, and Minute Order relative to challenges brought before the Court. The Order invalidated the four parts of the standard.

December 12, 1997

OSHSB appealed Judge Ford's Order with its legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

January 30, 1998

Judge Ford further ruled that his Order will remain in effect and not be stayed until the Court of Appeal hears the case.

Source: OSHSB

(Continued on next page)

Ergonomics Standard in California: A Brief History (continued)

March 13, 1998

The Third District Court of Appeal ruled that Judge Ford's Order to eliminate parts of Section 5110 would be stayed until the Court of Appeal issues a decision on the appeal filed in December 1997. The Standard is currently in effect and will remain in effect until the case is decided by the Court of Appeal.

October 29, 1999

After hearing the case in September, the Court of Appeal issued an opinion reversing the Superior Court's judgment. The Court of Appeal directed the Superior Court to issue a new judgment in accordance with the instructions contained in its final opinion. The Court struck the regulatory exemption for employers with less than 10 employees.

November 1999

Federal OSHA introduced a proposed ergonomics standard, 29 Code of Federal Regulations (CFR) 1910.900, known as the Ergonomics Program Standard.

March 15, 2000

The Superior Court issued the new judgment and a modified writ of mandate. In response to the court's instructions, the OSHA Standards Board filed a revision to Title 8, General Industry Safety Orders, Section 5110 of the California Code of Regulations (CCR) with the OAL.

April 28, 2000

The court-ordered revision of CCR Section 5110 was approved by the OAL and was filed with the Secretary of State to be effective immediately.

November 2000

Federal OSHA ergonomics standard, 29 CFR 1910.900, known as the Ergonomics Program Standard, was finalized.

January 16, 2001

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(Continued on next page)

Ergonomics Standard in California: A Brief History (continued)

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Source: OSHSB

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Background

California serves as a national leader in worker protection and injury and illness prevention. One example of California's leadership in this area is the Worker Occupational Safety and Health Training and Education Program (WOSHTEP), mandated by Labor Code Section 6354.7, which provides for the Workers' Occupational Safety and Health Education Fund (WOSHEF), administered by CHSWC. This fund is used to establish and maintain WOSHTEP.

Purpose and Objectives

The purpose of WOSHTEP is to promote safety and health prevention programs. The program focuses on developing and providing injury and illness prevention skills for employees and their representatives to take a leadership role in promoting safety and health in the workplace. This program is being delivered through a statewide network of training providers.

CHSWC's mandate for WOSHTEP is to:

- Develop and provide a core curriculum addressing competencies for effective participation in workplace injury and illness prevention programs and on workplace health and safety committees.
- Develop and provide additional training for any and all of the following categories:
 - Industries on the high hazard list.
 - Hazards that result in significant worker injuries, illnesses or compensation costs.
 - Industries or trades where workers are experiencing numerous or significant injuries or illnesses.
- Provide health and safety training to occupational groups with special needs, such as those who do not speak English as their first language, workers with limited literacy, young workers, and other traditionally underserved industries or groups of workers.
- Give priority to training workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on health and safety committees or serving as designated safety representatives.
- Operate one or more libraries and distribution systems of occupational health and safety training material.
- Prepare an annual report, developed by the advisory board, evaluating the use and impact of the programs.

Funding

Pursuant to Labor Code Section 6354.7(a), insurance carriers who are authorized to write workers' compensation insurance in California are assessed \$100 or .0286 percent, whichever is greater, of paid workers' compensation indemnity amounts for claims reported for the previous calendar year to the Workers' Compensation Insurance Rating Bureau (WCIRB). This

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

assessment is then deposited into the WOSHEF. CHSWC uses these funds for the development and implementation of WOSHTEP.

Project Team

CHSWC contracts with the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, and the Labor Occupational Health Program (LOHP) at the University of California, Berkeley, to design and carry out needs assessments with key constituencies, develop curriculum, conduct training, operate a resource library of health and safety resource materials, and build a statewide network of trainers.

Labor-Management Advisory Board

A labor-management Advisory Board for WOSHTEP is mandated by legislation and has been established. The Advisory Board meets bi-annually to assist the Project Team on all aspects of the Program. The role of the Advisory Board is to:

- Guide development of curricula, teaching methods and specific course material about occupational health and safety.
- Assist in providing links to the target audience.
- Broaden partnerships with worker and employer organizations, labor studies programs and others that are able to reach the target audience.
- Prepare an Annual Report evaluating the use and impact of WOSHTEP.

WOSHTEP Accomplishments

Needs Assessment

CHSWC, from the inception of WOSHTEP, has recognized the important role that key stakeholders, including employers, labor, educators, insurers, governmental agencies, and community-based organizations, play in determining the success of WOSHTEP.

Therefore, CHSWC, LOSH, and LOHP have conducted, and continue to conduct, needs assessment activities with representatives from key constituency groups. These needs assessments are designed to provide direction for development and refinement of core and supplemental curriculum, implementation of training programs statewide and effective outreach to the target audience.

Based on extensive needs assessment, WOSHTEP has developed four major programs: (1) a Worker Occupational Safety and Health (WOSH) Specialist curriculum; (2) a Small Business Model, currently adapted for the restaurant industry; (3) a Young Worker Program of health and safety education, training, and leadership opportunities; and (4) two Resources Centers, one each in northern and southern California, with online educational materials, including a Multilingual Resource Guide, on health and safety.

WOSH Specialist Curriculum

A WOSH Specialist curriculum has been designed to build knowledge and skills in many areas of injury and illness prevention. Participants are required to successfully complete core training (six modules), plus a minimum of three supplemental modules relevant to their workplace, in order to be recognized as WOSH Specialists. The curriculum has been piloted and reviewed by occupational health experts and members of the WOSHTEP Advisory Board and has been printed in three languages.

Roles of WOSH Specialists

The WOSHTEP curriculum is intended to help participants develop the skills needed to participate actively in injury and illness prevention efforts, multiply resources and join in problem solving in the workplace. Possible roles WOSH Specialists can play upon completion of training include the following:

- Participate on an employer-employee health and safety committee.
- Help to identify a range of potential hazards on the job and uncover the root causes by conducting surveys of workers or walk-through inspections to determine health and safety problems.
- Assist in analyzing data collected from surveys, inspections, and other sources in order to identify and prioritize health and safety problems to solve.
- Participate in efforts to reduce or eliminate common hazards.
- Contribute to efforts to explain the legal requirements for maintaining a healthy and safe workplace and support an employer's compliance efforts.
- Help to provide health and safety training to co-workers.
- Help to develop an Injury and Illness Prevention Plan (IIPP).
- Serve as a health and safety resource for co-workers, employers, the union, labor-management committees, etc.

Core Curriculum.

The core curriculum addresses competencies for effective participation in workplace injury and illness prevention programs and on workplace health and safety committees. The core curriculum consists of the following modules:

- Promoting Effective Safety Programs
- Identifying Hazards in the Workplace
- Controlling Hazards in the Workplace
- Health and Safety Rights and Responsibilities
- Workers' Compensation and Return-to-Work Programs
- Taking Action

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Supplemental Module

Supplemental modules have been developed to address the needs of the participants. These modules cover the following topics:

- Bloodborne Pathogens
- Chemical Hazards and Hazard Communication
- Communicating Effectively About Workplace Health and Safety
- How Adults Learn Best: Sharing Health and Safety Information in the Workplace
- Preventing Musculoskeletal Disorders: Introduction to Ergonomics
- Workplace Health and Safety Committees

Additional topics will be considered as needs are identified in the future.

Pilot Training Programs

Needs assessments identified the importance of piloting the training program with diverse populations and in different settings due to the differences in size of employers, languages and types of industry in California.

Four different settings were selected to pilot the curriculum in 2004. LOSH conducted pilot trainings with a light manufacturing company and worker advocacy groups in Los Angeles. LOHP conducted pilot training with homecare workers in San Francisco and a multi-industry group in the Bay Area. The following is a description of the four pilots:

Felbro, Inc.

This pilot was selected to address the following WOSHTEP legislative priorities:

- Non-English speaking audience.
- Industry with significant injuries.
- Ability for those trained to train other workers.
- Traditionally underserved populations.

Felbro, Inc., a light manufacturing company, is located in East Los Angeles and is representative of a typical small manufacturing plant comprised of a Spanish-speaking immigrant workforce. Training was conducted in Spanish with all Spanish-speaking participants.

Home Care Workers

This pilot was selected to address the following WOSHTEP legislative priorities:

- Non-English speaking audience.

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- Industry with significant injuries.
- Ability for those trained to train other workers in several different languages.
- Traditionally underserved population.
- Small business.

The participants of this training were home care workers who are members of the Service Employees International Union (SEIU) Local 250 and provide home care services through two organizations, the San Francisco In-Home Supportive Services (IHSS) and the IHSS Consortium.

Training was conducted in English with simultaneous translation into Spanish and Chinese by native-speaking interpreters.

Joint Labor Management Open Enrollment

This pilot was selected to address the following WOSTEP legislative priorities:

- Industries on the high hazard list.
- Industries or trades with high injury rates.
- Occupational groups with English as a Second Language.

Participant organizations included:

- Communications Workers of America
- Service Employees International Union
- United Taxicab Workers
- California Correctional Officers Association
- Community Occupational Health Project
- United Food and Commercial Workers
- California State Employees Association
- Amalgamated Transit Union
- American Federation of State, County, and Municipal Employees
- San Mateo Labor Council
- International Brotherhood of Electrical Workers

Employer/Industry Represented:

- Large and small telecommunication employers
- Bay area county medical center

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- San Francisco taxi companies
- California Department of Corrections
- Small employers-construction, janitorial
- Meatpacking employers
- Tree trimming employers
- California State University
- Bay Area Rapid Transit (BART)
- East and South Bay Municipal Utility District (MUD)
- University of California

Community Based Immigrant Worker Organization

This pilot was selected to address the following WOSHTEP legislative priorities:

- Non-English speaking audience.
- Industry with significant injuries.
- Ability for those trained to train other workers.
- Traditionally underserved populations.

The training participants were leaders and outreach workers representing the Coalition of Immigrant Worker Advocates (CIWA), a collaboration of community worker-advocacy centers serving immigrant and limited English-speaking workers in Los Angeles.

Ongoing WOSH Specialist Training

Pilot training concluded in August of 2004. During the remainder of 2004 and continuing throughout the 2004-2005 fiscal year, a number of additional WOSH Specialist training courses have been conducted. These include:

- Laney College, Oakland, CA – August 23, 2004, through December 13, 2004. In English – 17 graduates.
- Chrysalis, a nonprofit organization that runs a program called Streetworks for economically disadvantaged and homeless individuals, in Los Angeles, CA – September 29, October 7, 13 and 20, 2004. In English – 13 graduates.
- Mr. Clean Maintenance Services, a janitorial service company for grocers, based in Bloomington, CA – September 9, 16, 24 & 30, 2004. In Spanish – 15 graduates.
- SEIU Local 1877, for worker leaders in the janitorial industry, Los Angeles, CA – November 9 – December 21, 2004. In Spanish – 17 graduates.
- Seal Methods, Inc., a manufacturer in Santa Fe Springs, CA – November 20, December 11 & 18, 2004, January 8 & 21, 2005. In Spanish – 14 graduates.

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- Phoenix House, a statewide nonprofit substance abuse treatment program, in Los Angeles, CA -- January 11, 18, & 27, 2005. In English - 22 graduates.
- Open Enrollment for Supervisors/Managers representing current companies whose front line workers were trained (Felbro, Seal Methods, Chrysalis, & Phoenix House) plus So Cal Off-Track Betting & Techmer PM. March 9, 16, and 23, 2005. In English -13 participants.
- San Diego City College, San Diego, CA -- April 30, May 7, and May 21, 2005. Launched as Labor Studies 123A. Participants received 1.5 credits. In English for 17 participants.
- Open Enrollment for southern California labor representatives who can educate members/coworkers, research workplace hazards and controls, and advocate for stronger health and safety policies in the workplace at the local, regional, and state level. This course was offered in partnership with the Southern California Coalition for Occupational Safety and Health (SoCalCOSH), the UCLA Downtown Labor Center, and the Los Angeles County Federation of Labor. June 6, 13, & 20, 2005. In English for 18 participants.
- Immigrant worker course for worker leaders in the janitorial industry to be held in June of 2005. This course was co-sponsored by the Service Employees International Union, Local 1877, the Oakland City Center and University of California, Berkeley. The course was taught by LOHP's bilingual trainers and two trainers from the San Mateo County Central Labor Council, recent graduates of the first WOSH Specialist training-of-trainers course.
- The State of California, Department of Corrections, has decided to provide WOSH Specialist training to joint labor-management health and safety committee members in all of its institutions statewide. LOHP co-taught the first group for Department of Corrections administrative staff in Sacramento, California, in July of 2005, with recent graduates of the WOSH Specialist training-of-trainers course.
- Open enrollment class to be offered through the Los Angeles Trade Technical Community College Labor Studies Program and co-sponsored with the SoCalCOSH, September through December 2005. LOSH will co-teach the 3-unit course with graduates from the July WOSH Specialists training-of-trainers course.

Awareness Trainings

LOHP and LOSH have also conducted shorter awareness trainings, drawing on the WOSH Specialist curriculum, to help promote awareness of and interest in the WOSH Specialist courses. Examples of awareness sessions are:

- Summer Institute for Union Women held on the UCLA campus on July 8, 2004. This three-hour awareness session entitled "Safety and Health" was a Spanish-English bilingual session attended by 15 participants including high school and University youth, garment workers, and union members from SEIU representing janitors and by AFTRA staff representing workers in the entertainment industry. WOSHTEP activities included Identifying Underlying Causes of Injuries, Hazard Mapping, Pyramid of Controls, and Workers' Compensation.
- Cypress Mandela/Women in Skilled Trades Training Center/Oakland, CA, August 4, 2004, for 35 pre-apprenticeship construction students who are being trained to work in a variety of building trades as roofers, plumbers, cement masons, heavy equipment operators, and laborers. Training consisted of a course on Health and Safety Rights and Responsibilities.

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As the result of this training, six Cypress Mandela students signed up for the fall 2004 Laney College WOSH Specialist Class.

- Chrysalis Hazard Communication training on September 15, 2004, as a preview to the full 24-hour WOSHTEP course conducted September – October 2004. This two-hour awareness session conducted in English was attended by 31 clients of the non-profit's Streetworks program. Topics included activities on the Hazard Communication Standard; how chemicals enter the body, back injury prevention and resources for taking action.
- La Raza Center Legal sponsored an awareness training with day laborers in construction, home care workers and house cleaners, in San Francisco, CA, on January 29 and February 5, 2005. Forty Spanish-speaking employees were taught WOSHTEP modules Identifying and Controlling Hazards and Introduction to Ergonomics, in Spanish. This is a non-English speaking work force that performs high-hazard jobs and for many participants, it was the first time they have ever received health and safety training.
- Garment Worker Center, Los Angeles, CA. A 20-hour Spanish-Chinese bilingual health and safety awareness training was conducted in five sessions from February 6 – March 1, 2005. Nine Spanish speakers and two Mandarin speakers participated in the sessions that covered identifying underlying causes, hazard mapping and prioritizing hazards.

Refresher Trainings

Refresher trainings have been provided to a number of trained WOSH Specialists in a variety of settings to assist them in carrying out activities they chose to pursue in their workplaces after completion of the WOSH Specialist training. Refresher trainings were conducted as follows:

- Felbro, Inc. A six-month, one-hour follow-up session was held on December 8, 2004. Immediately after the WOSH Specialist graduation, participants were able to implement some of the suggestions they introduced during their presentations including a device to raise work objects to prevent ergonomic injuries. Co-workers look up to WOSH Specialists for issues related to health and safety, while at the same time, WOSH Specialists are more confident in giving their opinions to the employer's health and safety consultant on how to make their duties less dangerous.
- An eight-hour SEIU Local 250/IHSS homecare refresher training-of-trainers was conducted on January 29, 2005. This refresher course, including training on how adults learn best, how to make presentations, how to answer questions and approaches to training challenges. The IHSS Consortium in San Francisco has decided to utilize the company's trained WOSH Specialists to teach two-hour awareness training classes on identifying and controlling hazards to the Consortium's 500+ employees. To date, four WOSH specialists have conducted trainings for 140 of their IHSS homecare co-workers. These trainings were delivered in English, Spanish and Chinese and are ongoing.
- A joint labor-management open enrollment eight-hour refresher course was conducted in Berkeley, CA, on March 3, 2005. Fifteen WOSH Specialists received refresher training on overcoming challenges/strategies for problem-solving, changes in workers' compensation legislation, and using the WOSH Resource Center.
- Additional refresher trainings have been conducted with WOSH Specialist graduates from CIWA, Chrysalis, Seal Methods and Mr. Clean Maintenance Services.

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WOSH Specialist Accomplishments

WIOSH Specialists have reported accomplishments to date, which include: requesting or offering health and safety information to co-workers covering risk mapping for identifying hazards in the workplace, causes of hazards, ergonomics, Cal/OSHA rules and regulations, and Injury and Illness Prevention Plans; participating in efforts to identify hazards on the job, including surveys, inspections and research; participating in efforts to reduce or eliminate hazards; conducting or helping to conduct health and safety trainings; developing or helping to develop health and safety programs or policies; and recruiting new members to a workplace health and safety committee.

Small Business Resources

Because many small business owners may find it difficult to send their employees to become WOSH Specialists, easy-to-use training materials have been developed to help small business owners train their employees to identify hazards and participate in finding ways to control those hazards in their workplaces.

Small Business Health and Safety Training Resources

In partnership with the State Compensation Insurance Fund (SCIF), Cal/OSHA Consultation, and the California Restaurant Association (CRA), LOHP completed the first set of resources in June 2005 for owners and managers of small restaurants. Through a focus group and pilot tests with several small restaurants, LOHP identified what managers said they needed and would be able to use. The materials include a training guide for two short training sessions and tip sheets on the most common restaurant hazards that managers can tailor to the specific hazards in their own restaurants.

The Small Business Health and Safety Training Resources for restaurants help owners and managers develop and implement an effective Injury and Illness Prevention Program and help ensure that businesses are aware of Cal/OSHA compliance issues. The materials also help ensure that employees, particularly young workers, are properly trained in health and safety hazards. The Small Business Health and Safety Training Resources for the restaurant industry are available in Spanish and English.

Dissemination Plans for the Small Business Model for restaurants have been developed by LOHP and LOSH. They include trainings of employers, presentations at employer association meetings, distribution of promotional materials, and other outreach activities.

In May 2005, LOSH began outreach to restaurant industry franchises and membership associations based in southern California in order to recruit restaurant managers to participate in a training-of-trainers that replicates the model and material developed by LOHP. Over the next year, training workshops for managers and supervisors will be held in northern and southern California, and the materials will be promoted and distributed throughout the state.

An additional potential partnership with one or more employer associations for a future Small Business Health and Safety Training project in another industry is being developed.

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Young Worker Programs

CHSWC believes strongly in the importance of educating young workers and keeping them safe as they enter the workforce. Statistics show that over 200,000 teens are injured on the job annually in the United States; at least 77,000 of these injuries are serious enough to require hospital treatment. Many of the injuries teens experience occur from work in the retail and services sector. A goal of the WOSHTEP program is to identify unique ways to effectively engage young workers as health and safety promoters at work or in their communities.

LOHP Young Worker Research Team

In conjunction with the California Partnership for Young Worker Health and Safety, WOSHTEP funding supported an evaluation project conducted by youth to help identify youth engagement strategies. The goal of this project was to provide an opportunity for high school students to engage in workplace health and safety issues so they can become advocates and leaders in the workplace. As part of the project, six high school students worked at LOHP throughout the summer and fall to develop and conduct an evaluation plan, which included focus groups and a written survey of over 400 other high school students.

The project was conducted with extensive assistance from Youth in Focus, an Oakland-based youth development organization with extensive experience in youth-led projects.

The young worker research team completed a report entitled “The Incredibles on the Job” and developed recommendations that were presented to the California Partnership for Young Worker Health and Safety, a statewide task force that includes representatives from key government agencies and organizations that play a role in both protecting and educating California’s young workers. The final report, completed in December 2004, described several relevant key findings:

- Most youth get or want to get their information from people they trust.
- Most youth think that the best way to help youth is to teach youth (especially by being peer educators).
- Incentives that would attract youth to being peer educators include stipends and school or community service credits.

LOSH Peer Educator Model

To enhance knowledge and presentation and leadership skills, eight Peer Educators from Manual Arts High School participated in one or more of the following conferences and workshops: Summer Institute for Union Women held at UCLA; quarterly meeting of the California Resource Network for Young Worker Health and Safety in Anaheim; Let Children Be Children, Lewis Wickes Hine Crusade Against Child Labor historical photography exhibit at the Los Angeles City Hall; Professional Development workshop for teachers at United Teachers Los Angeles; Teach-In on Labor for Students at UCLA; and the Young Worker Leadership Academy (YWLA) in Anaheim, CA.

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To strengthen the Peer Educator model, LOSH has implemented a college “Near Peer” mentor model to provide ongoing mentoring to the high school peer educators and to facilitate occupational health and safety training with adult workers. Seven UCLA students have been recruited to mentor the high school students. These UCLA students received an orientation and initial training on popular education and workplace health and safety issues for young workers. They will attend Manual Arts Peer Educator meetings, initiate outreach to community organizations and conduct presentations on injury and illness prevention.

Young Worker Leadership Academy

WOSHTEP funding also supported a pilot Young Worker Leadership Academy, which the LOHP young worker research team and LOSH peer educators helped conduct. The Academy was held in Anaheim, California, on February 25 and 26, 2005. CHSWC co-sponsored this event with LOSH, LOHP, the Center for Civic Participation and the California Resource Network for Young Worker Health and Safety. Twenty-five young people from six different organizations around the state attended.

The goals of this Academy were to teach youth about workplace health and safety and their rights on the job; to help youth start thinking about ways to help make sure young people do not get hurt on the job; and to provide a forum for these youth to plan for specific actions they could take in their own communities to promote young worker safety during Safe Jobs for Youth Month in May 2005.

During May 2005, each of the six teams successfully conducted a variety of activities, including producing a health and safety informational video and designing health and safety informational brochures to distribute at health centers, conducting workshops at school and in the community on health and safety hazards and preventing injuries in the workplace and on job rights for teens, and holding a teen poster contest.

The Academy was so well-received that two additional Academies will be held in 2006 to build on this first experience, with the goal of developing a network of youth who can help promote workplace health and safety in their communities.

Resource Centers

Resource Centers at LOHP and LOSH have been established to house and act as distribution systems of occupational health and safety training material, including, but not limited to, all materials developed by WOSHTEP. These centers provide information and technical assistance.

Multilingual Health and Safety Resource Guide

An electronic Multilingual Health and Safety Resource Guide has been developed for CHSWC by LOHP. The guide is a free resource for finding health and safety information in multiple languages. This guide is a collection of worker training materials, such as fact sheets, checklists, and other resources, that are available online and can be printed to distribute to employees participating in injury and illness prevention programs in the workplace.

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The Multilingual Health and Safety Resource Guide covers a broad range of topics including identifying and controlling hazards, legal rights and responsibilities in the workplace, ergonomics, chemical hazards, and violence prevention. It also provides information on hazards in a number of specific industries and occupations, including agriculture, construction, health care and office work.

Resources are available in 18 different languages including Spanish, Chinese, Arabic, Croatian, Haitian/Creole, Hmong, Japanese, Khmer/Cambodian, Korean, Polish, Portuguese, Russian, Serbian, Swahili, Tagalog, Thai, and Vietnamese. The Guide is available on the web at <http://www.dir.ca.gov/chswc/MultilingualGuide/MultilingualGuideMain.html>.

The Multilingual Resource Guide will be maintained and updated regularly. Training handouts are being translated into Spanish and Chinese and, in future years, other languages as needed and as funding allows.

Website

A CHSWC-housed WOSHTEP website has been created to promote public access and awareness of WOSHTEP and products developed for the program. These materials include a WOSHTEP fact sheet, Multilingual Resource Guide, survey of state, national and international training programs, and other resources developed for WOSHTEP training.

Database

CHSWC maintains a database of all trainers, WOSH Specialists, course information and certificates awarded. The database assists in tracking all participants in the program and with the evaluation process.

Future Plans

WOSHTEP Strategic Plan

A Strategic Plan for WOSHTEP is expected to be developed in 2006, which will focus on the four major programs: the WOSH Specialist Curriculum, Small Business Resources, Young Worker Programs, and the Resource Centers.

WOSH Specialist Curriculum Statewide Network of Trainers

The program envisions a statewide network of trainers who become certified to offer the curriculum. Ongoing outreach is being conducted to identify trainers interested in participating in the WOSHTEP Trainers Network. Expansion of the network includes a training-of-trainers curriculum, mentoring and co-training with new trainers, and partnering with community colleges and other organizations. Ways to enhance networking among the trainers to encourage and facilitate the exchange of information are being explored.

LOHP offered the first WOSH Specialist training-of-trainers course in April 2005 to 12 trainers. The course helps new trainers learn effective training skills and become familiar with teaching the WOSH Specialist modules. The new trainers will complete an apprenticeship that will

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include working with a mentor trainer from LOHP. LOHP intends to mentor these trainers through the following courses:

- A labor studies course offered at Laney College in Oakland, CA.
- A course jointly sponsored by the Communication Workers of America (CWA) and SBC targeting telecommunications workers.
- A course sponsored by the Alameda County Public Authority for in-home support services and Service Employees International Union (SEIU), Local 616, targeting homecare workers.
- A bi-lingual (Spanish/English) course sponsored by the San Mateo Central Labor Council targeting immigrant workers employed in small businesses.
- A course sponsored by the State of California Department of Corrections targeting joint labor-management health and safety committee members employed at several facilities within northern California.

LOSH offered a WOSH Specialist training-of-trainers course in July 2005, for 20 participants, including bilingual trainers from the State Compensation Insurance Fund (SCIF), representatives from non-profit organizations working with day laborers and with teenagers, workers from small manufacturing and from racetrack industries, and union representatives who will train their members in the homecare and nursing home industries, as well as through the Los Angeles and San Diego Community College Labor Studies Programs.

A Training-of-Trainers Implementation Plan will be developed to reach new training partners for the training network with an emphasis on recruiting participants who can reach workers in high hazard industries.

Awareness Trainings

As part of outreach to employers, at least six short awareness trainings will be held in 2006 to promote employer interest and participation in WOSHTEP. Additionally, LOSH Youth Peer Educators will conduct prevention-awareness outreach sessions to limited English-speaking and/or immigrant workers. These workers will be encouraged to share what they have learned with their employers in order to promote offering of the full 24-hour WOSHTEP course to a group of workers on-site. CHSWC, LOSH, and LOHP will work with the WOSHTEP Advisory Board, training-of-trainers participants, needs assessment stakeholders and others to prioritize employer groups who would most benefit from awareness trainings.

Evaluation

Evaluation approaches are being explored and tools will be developed to collect feedback on the WOSH Specialist curriculum from WOSH Specialist trainers and members of the Trainers' Network for use in curriculum revisions in future years.

Small Business Health and Safety Training for Restaurant Owners and Managers

Outreach strategies for the Small Business Health and Safety Training for restaurants have been developed by LOHP and LOSH. They include trainings of employers, presentations at employer association meetings, distribution of promotional materials, and other outreach activities.

In May 2005, LOSH began outreach to restaurant industry franchises and membership associations based in southern California in order to recruit restaurant managers to participate in a training-of-trainers that replicates the model and material developed by LOHP. Over the next year, training workshops for managers and supervisors will be held in northern and southern California, and the materials will be promoted and distributed throughout the state.

An additional potential partnership with one or more employer associations for a future small business health and safety training project in another industry is being developed.

SPECIAL REPORT: KEEPING CALIFORNIA'S YOUTH SAFE ON THE JOB

Updated Recommendations of the California Partnership for Young Worker Health and Safety

Purpose of the California Partnership for Young Worker Health and Safety

CHSWC established the California Partnership for Young Worker Health and Safety was established in 1997. Its purpose is to find ways to reduce work-related injuries and illnesses among youth in California's workforce, as well as to develop young workers' health and safety skills and to promote positive and safe employment for young workers. The Partnership brings together 30 representatives from key agencies and organizations that are involved with California youth employment and education issues or that can otherwise play a role in educating and protecting young workers. Members include representatives from government agencies, parent organizations, teacher organizations, employer groups, and others.

The Partnership was established because young workers are being injured on the job in alarming numbers -- often at rates that are higher than for adult workers, even though youth under age 18 are protected from doing the most hazardous kinds of work. Coordinated efforts are needed to educate youth, employers, parents, and teachers and to strengthen enforcement of health and safety and child labor laws.

Accomplishments

In 1998, the Partnership released its first set of recommendations for better protecting and educating California's young workers. Over the past six years, the Partnership and its members have begun implementing several key recommendations and have made significant advances on 12 of the 25 recommendations. Through these accomplishments, tens of thousands of youth, employers, parents and teachers have received training or information on workplace health and safety and how to keep youth safe on the job. Key accomplishments include:

California Resource Network for Young Worker Health and Safety

Assembly Bill (AB) 1599, passed in September 2000, established the California Resource Network for Young Worker Health and Safety. The Network is made up of nine organizations with direct access to teachers, employers, and youth. With core funding from CHSWC, the Network provides coordinated outreach and information to organizations and individuals throughout California, through its website, www.youngworkers.org, toll-free phone line, and direct training, mailings, and outreach by all the Network members.

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Safe Jobs for Youth Month

Now in its eighth year, this annual public awareness campaign in May reaches thousands of teachers, youth and employers. The campaign includes teaching kits, media reports, and teen poster and journalism contests.

Curricula for Teachers

Several targeted workplace health and safety training curricula have been developed by Network members, the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, and the Labor Occupational Health Program (LOHP) at the University of California, Berkeley. These curricula are distributed to thousands of educators, including work experience educators, WorkAbility teachers, job trainers, school-to-career teachers, and many others.

Institutionalized Training for Teachers

Training for teachers on how to teach job health and safety using these curricula has been institutionalized for WorkAbility teachers and as part of the annual training conferences of the California Association of Work Experience Educators (CAWEE).

Outreach to Employers

Materials have been developed and outreach conducted, reaching thousands of employers of young workers. Materials include the Facts for Employers fact sheet, Tools for Orienting Worksite Supervisors, the California Work-Based Learning Tool Kit and Quick Guides, and web-based information at www.youngworkers.org, and at www.scif.com.

Identifying Opportunities for Interagency Collaboration

Partnership members have met with key agency leadership from the Departments of Education, Industrial Relations, and Health to identify opportunities for interagency collaboration. Several agencies have increased their focus on young worker issues, and a pilot collaborative project was initiated.

Improving Work Permit Systems

Through promotional efforts, primarily on the part of CAWEE and Department of Education staff, many school districts have improved their own district work permit systems by sending more staff for training, adopting computer-based work permit systems, and providing information to youth and/or employers on labor and health and safety laws.

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Updating Recommendations

Partnership members agreed that it was time to revise and update the 1998 recommendations and to establish new priorities for the group's work. During late 2003 and early 2004, subcommittees met to review accomplishments and draft revisions to the recommendations.

In March 2004, a working symposium was organized to seek additional input on the draft recommendations. The one-day symposium, "Young Workers at Risk: Planning for Action," included 20 Partnership members and 55 community members representing teachers, employers, job trainers and youth. Fifteen youth participants, who included occupational health peer educators from LOSH's Young Worker Project and youth recruited from work experience programs, attended a half-day meeting the day before to learn more about the issues and to prepare for their involvement during the meeting. Participants discussed new and existing recommendations and suggested priorities. The recommendations were finalized at a statewide Partnership meeting in June 2004. The Partnership will use these recommendations and the priorities identified both as a basis both for joint work conducted by Partnership members and as a way to promote efforts to be undertaken by specific agencies and organizations outside the work of the Partnership.

The 33 recommendations developed by the Partnership are organized in the following categories:

- School-based Strategies
- Initiatives in the Workplace
- Strategies in the Community
- Strengthening the Role of Work Permits
- Strategies for Enforcement Agencies
- Need for Further Research

Key Recommendations

Partnership members and Symposium participants agreed that outreach and education for youth, employers, teachers and parents are key and that the efforts of the Resource Network and the annual Safe Jobs for Youth Month campaign should continue to provide the foundation for the Partnership's work and should be expanded. This work is reflected in the following two recommendations:

Identify adequate and permanent support for the Resource Network for Young Worker Health and Safety (Recommendation #15).

With core funding from CHSWC and extensive in-kind contributions from Network members, current Resource Network services include:

- Coordination of Safe Jobs for Youth Month public awareness campaign.

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- Maintenance of a comprehensive website with information for all key audiences, at www.youngworkers.org.
- Staffing of a toll-free hotline to answer questions and provide technical assistance on health and safety and child labor law questions.
- Ongoing outreach, education and training workshops by Resource Network members for thousands of educators, youth and employers.
- If additional resources were available, Network members could develop new materials, materials could be translated into more languages, and Network members could expand innovative programs for teaching about workplace health and safety and other workplace issues, such as peer education programs, throughout the state.

Identify ongoing support and resources for the statewide “Safe Jobs for Youth Month” campaign to continue to raise public awareness of child labor laws and workplace health and safety issues faced by young workers (Recommendation #16).

More resources, partners, and specific activities need to be developed and promoted, especially at the local level, to extend the reach of this campaign. Having a “hook” or kick-off activity for the campaign is essential.

Priority Work Areas – Short-Term

In addition, based on input from the March 24, 2004 Symposium, Partnership members have selected the following four priority areas to work on over the next one to two years:

Integrating workplace health and safety into K-12 education (Recommendation #2).

The Partnership’s focus will be on finding ways to integrate information on workplace health and safety and child labor laws into state curriculum frameworks, as well as related testing, graduation requirements, and approved lists of teaching resources. Promotion of existing teaching curricula by Resource Network members at both the state and local level will also continue.

Developing and distributing industry-specific educational materials for employers and young workers (Recommendations #9 and #12).

Partnership members will focus on two industries: restaurants and grocery stores, with a focus on smaller-sized workplaces and on developing materials for immigrant employers. Two pilot projects have been initiated by several Partnership members and training materials have been completed.

Developing a plan for involving youth in planning, educating and advocating for workplace health and safety at the local and statewide level (Recommendation #21).

Partnership members will recruit and train a group of youth planners, with the goal of holding a statewide meeting for youth, within the next one to two years. The objective of this work is to actively engage youth in planning and conducting educational and advocacy strategies to

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promote workplace health and safety, in order to: (1) promote youth leadership development and increase their participation in workplace problem-solving and civic discussion of workplace issues; and (2) help develop effective education, outreach and advocacy strategies that are more relevant to and guided by youth themselves. The first Young Worker Leadership Academy was held in February 2005. Twenty-seven youth from six groups throughout the state, as well as a sponsor for each group, attended. Projects for Safe Jobs for Youth Month were developed by Academy participants and implemented in each team's school or community during the month of May.

Improving work permit systems (Recommendation #21). The initial focus will be on encouraging more schools to distribute basic, easy-to-read health and safety information to the student, parent, and employer as part of the work permit system, in particular by integrating information resources into computerized systems that are now used by about half of the state's school districts. Relevant Partnership members will continue to work together to encourage and assist school districts to be in compliance with existing work permit requirements.

Priority Work Areas – Long-Term

Other priorities identified at the Symposium, which the Partnership will explore further in the next two to five years, include:

Promoting local collaboration between employers, community-based youth development organizations, school programs, and local labor and health and safety enforcement or consultation staff (Recommendation #17).

Participants in the March 24, 2004 Symposium saw the value of bringing together at the local level the various agencies that share responsibility for protecting and educating young workers. The objective of this collaboration is to increase local sharing of information and resources and to increase the effectiveness of local education and enforcement efforts.

Implementing opportunities for interagency collaboration (Recommendations #26, #27 and #28)

Once new agency leadership has been appointed, the Partnership will review previously identified strategies for interagency work with the new leadership and identify possible pilot projects, such as joint education and enforcement efforts, or cross-training and increased sharing of information.

Developing a multi-faceted, comprehensive employer outreach plan (Recommendation #7).

Partnership members will continue to test different ways to reach employers, including through the two pilot projects listed above, with the goal of developing a comprehensive plan in the next several years. This plan may include distribution of information through business license offices, through employer organization meetings, conferences, and newsletters, and through the annual Safe Jobs for Youth Month public awareness campaign.

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The California Partnership for Young Worker Health and Safety has been a national leader in the effort to protect young workers from being injured on the job and to prepare young people to take an active role in workplace health and safety as adult workers. Several other states have formed their own statewide young worker “teams” and have modeled many of their efforts after the work being done in California.

While there is a great deal of work still to be done, many young workers have already benefited from the training and increased attention to young worker health and safety that have grown directly out of the Partnership's collective efforts.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Introduction

The Commission on Health and Safety and Workers' Compensation (CHSWC) monitors the overall performance of the entire health and safety and workers' compensation system to determine whether it meets the State's Constitutional objective to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character."

In this section, CHSWC has attempted to provide performance measures to assist in evaluating the system impact on everyone, particularly workers and employers.

Through studies and comments from the community, CHSWC has compiled the following information pertaining to the performance of California's systems for health, safety and workers' compensation. Brief interpretations are provided with the graphical representations.

The first subsection deals with how well the system is operating in terms of the volume of workload and the timeliness of actions. These factors affect both employers and employees. The second subsection discusses the costs, which are of particular interest to employers. The impact on workers in terms of benefits and outcomes is the focus of the third subsection.

Administrative Operations

- Division of Workers' Compensation (DWC) Opening Documents
- Division of Workers' Compensation Hearings
- Division of Workers' Compensation Decisions
- Division of Workers' Compensation Lien Decisions
- Vocational Rehabilitation Plan Approvals and Disapprovals
- Vocational Rehabilitation Decisions and Orders After Conference
- Vocational Rehabilitation Plan Outcomes
- Division of Workers' Compensation Audits
- Disability Evaluation Unit
- Information and Assistance Unit
- Division of Worker' Compensation Staffing

Adjudication Simplification Efforts

- Division of Workers' Compensation Information System
- Carve-outs – Alternative Workers' Compensation Systems

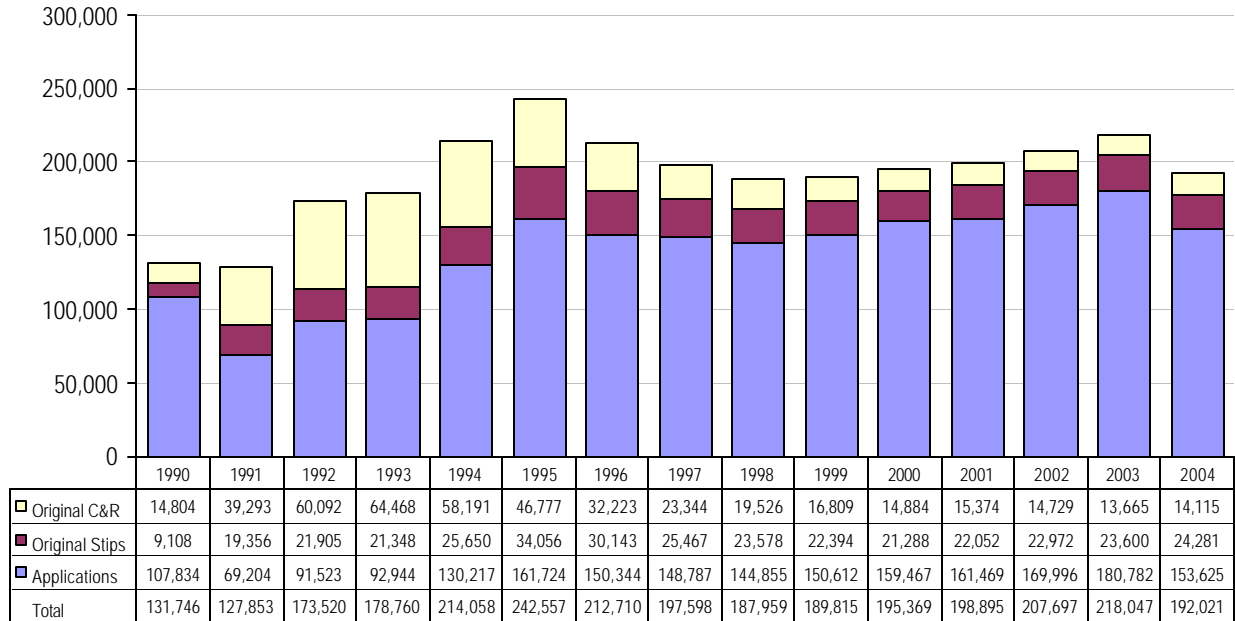
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Administrative Operations

Division of Workers' Compensation Opening Documents

Three types of documents open a Workers' Compensation Appeals Board (WCAB) case. The chart below shows the numbers of Applications for Adjudication of Claim (Applications), Original Compromise and Releases (C&Rs), and Original Stipulations (Stips) received by the DWC.

DWC Opening Documents



Source: DWC

The number of documents filed with the DWC to open a WCAB case on a workers' compensation claim fluctuated during the early- and mid-1990's, leveled off during the late 1990's, increased slightly between 2000 and 2003 and decreased between 2003 and 2004.

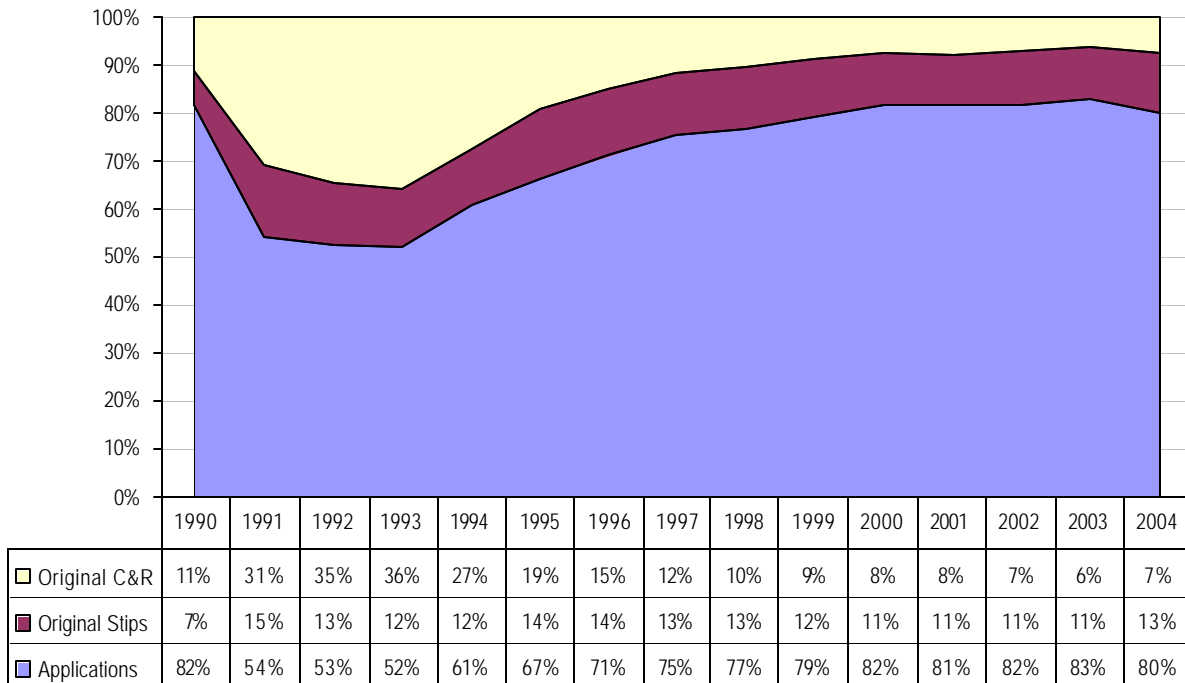
The period from 1991 to 1992 shows growth in all categories of case-opening documents, followed by a year of leveling off between 1992 and 1993. The period from 1993 to 1995 is one of substantial increases in Applications, slight increases in Stips and significant decreases in C&Rs. Through 2003, Stips and C&Rs continued to decline, while Applications increased slightly. In 2004, the situation was reversed with Applications declining and C&Rs and Stips increasing slightly.

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Mix of DWC Opening Documents

As shown in the graph below, the proportion or mix of the types of case-opening documents received by the DWC varied during the 1990's.

Percentage by Type of Opening Documents



Source: DWC

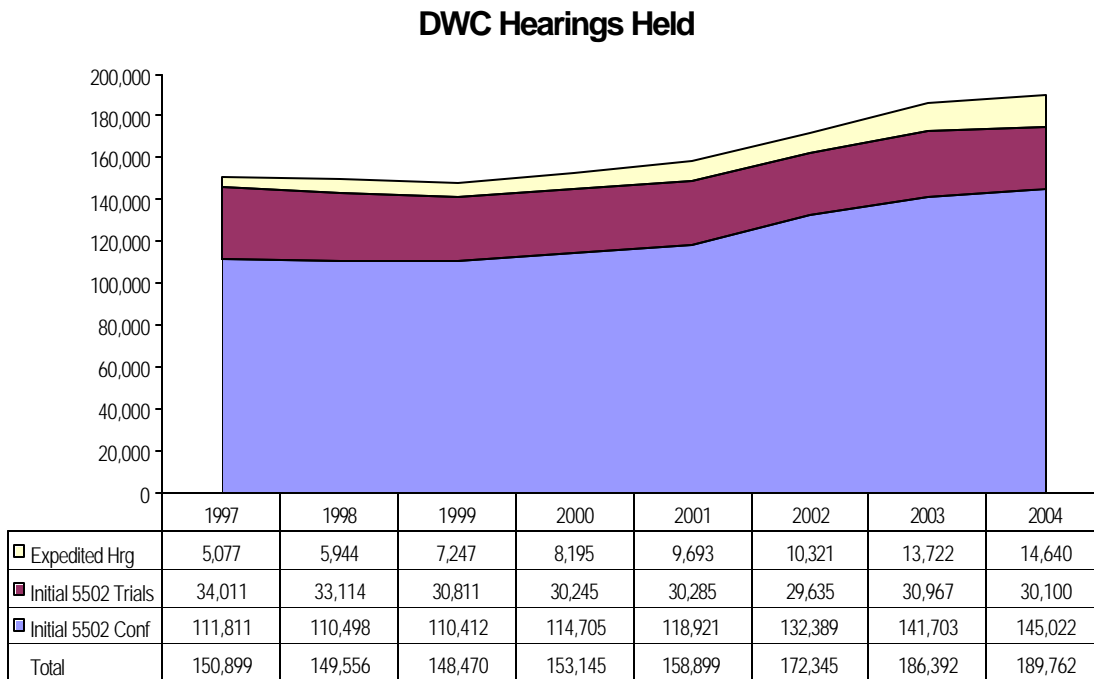
Applications initially dropped from about 80 percent of the total in 1990 to less than 60 percent in 1991, reflecting increases in both original Stips and C&Rs. The proportion of Applications was steady from 1991 to 1993, rising again through 2003, and declining slightly from 2003 to 2004. The proportion of original (case-opening) Stips and original C&Rs declined slightly from 1999 to 2003, and then increased slightly from 2003 to 2004.

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Division of Workers' Compensation Hearings

Numbers of Hearings

The graph below indicates the numbers of different types of hearings held in DWC from 1997 through 2004. Expedited hearings for certain cases, such as determination of medical necessity, may be requested pursuant to Labor Code Section 5502(b). Per Labor Code Section 5502(d), Initial 5502 Conferences are to be conducted in all other cases within 30 days of the receipt of a Declaration of Readiness (DR), and Initial 5502 Trials are to be held within 75 days of the receipt of a DR if the issues were not settled at the Initial 5502 Conference.



Source: DWC

While the total number of hearings held increased by 25.8 percent from 1997 to 2004, the number of expedited hearings grew by about 188 percent during the same period.

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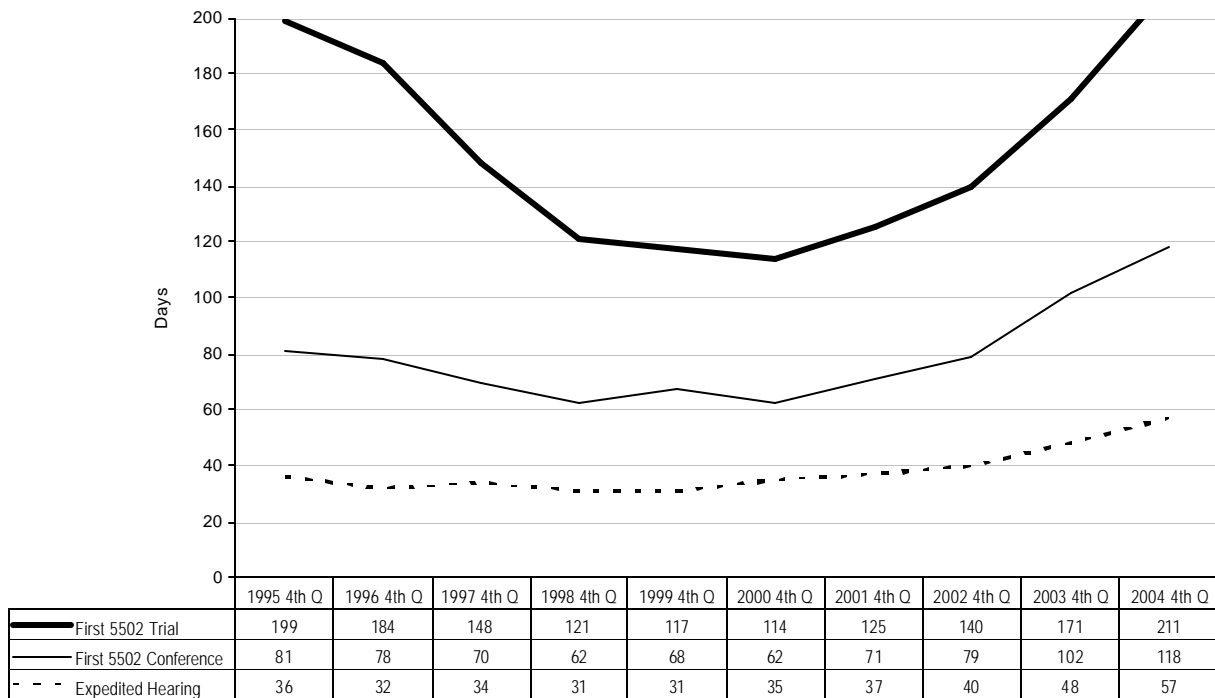
Timeliness of Hearings

California Labor Code Section 5502 specifies the time limits for various types of hearings conducted by the DWC on WCAB cases.

In general:

- A conference is required to be held within 30 days of the receipt of a request in the form of a DR.
- A trial must be held either within 60 days of the request or within 75 days if a settlement conference has not resolved the dispute.
- An expedited hearing must be held within 30 days of the receipt of the DR.

Elapsed Time in Days from Request to DWC Hearing



Source: DWC

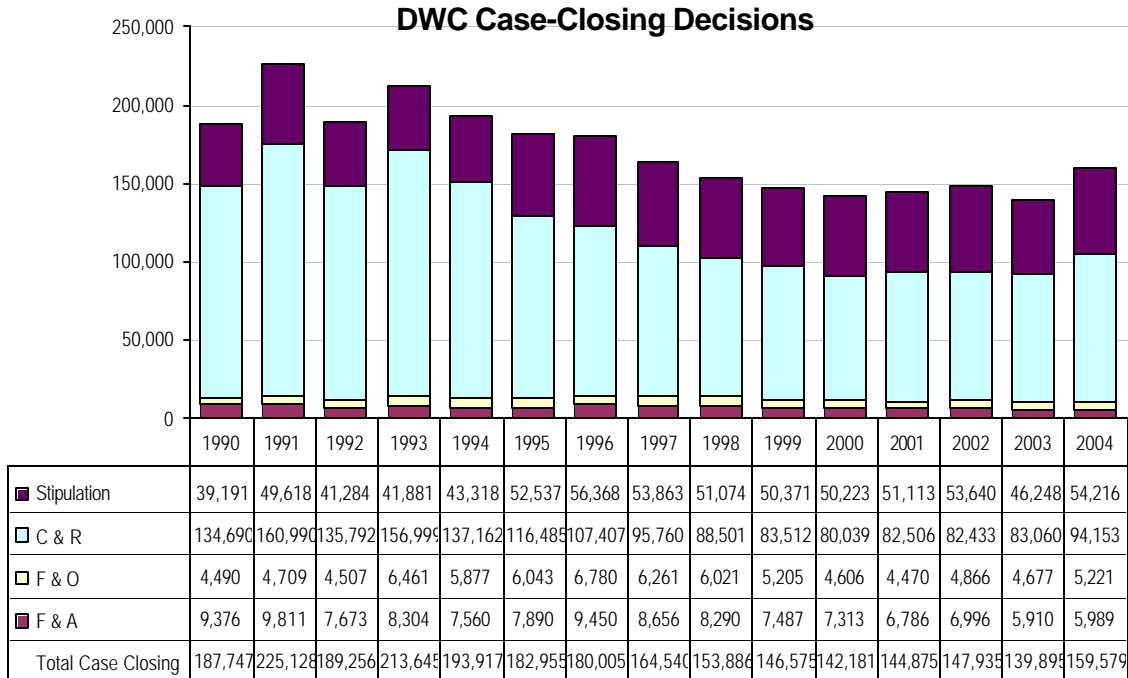
As the above chart shows, the average elapsed time from a request to a DWC hearing decreased in the mid- to late-1990's and then remained fairly constant. Nevertheless, as of 2000, all of the average elapsed times have increased from the previous year's quarter, and none are within the statutory requirements.

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Division of Workers' Compensation Decisions

DWC Case-closing Decisions

The following data indicate that the number of decisions made by the DWC that are considered to be case-closing have declined overall during the 1990's, with a slight increase from 2000 to 2002, followed by a decrease in 2003, and then an increase in 2004.



Source: DWC

- The numbers of Findings and Awards (F&As) have shown an overall decline of 36.1 percent from 1990 to 2004.
- Findings and Orders (F&Os) increased during the first part of the decade, declined to the original level in 2002, decreased slightly from 2002 to 2003, and increased again in 2004.
- Stips were issued consistently throughout the decade. The numbers of Stips issued rose from 1990 to 1991, declined from 1991 to 1992, leveled off from 1992 to 1994, rose again in 1995 and 1996, remained stable through 2000, increased slightly in 2001 and 2002, decreased in 2003, and increased again in 2004.
- The use of C&Rs decreased by half during the 1990's and into the millennium. C&Rs declined steadily from 1993 through 2000, increased in 2001, remained stable in 2002 and 2003, and increased in 2004.

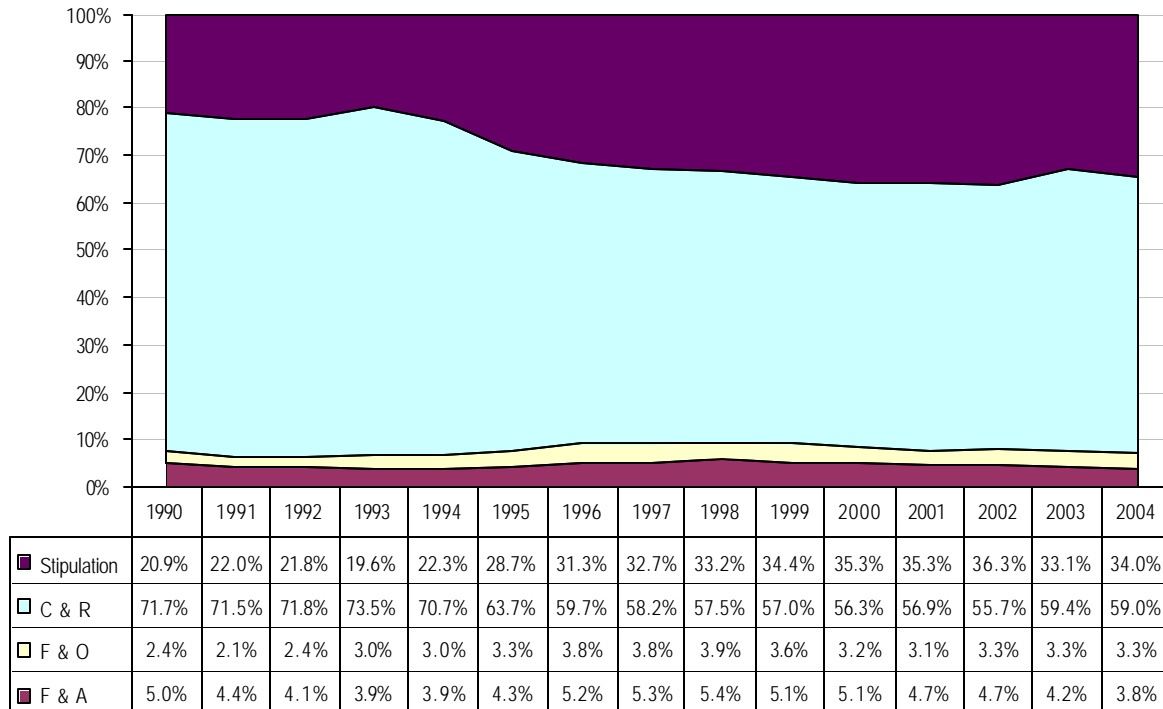
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Mix of DWC Decisions

As shown on the charts on the previous page and this page, again, the vast majority of the case-closing decisions rendered during the 1990's were in the form of a WCAB judge's approval of Stips and C&Rs which were originally formulated by the case parties.

Only a small percentage of case-closing decisions evolved from an F&A or F&O issued by a WCAB judge after a hearing.

DWC Decisions
Percentage distribution by type of decision



Source: DWC

During the period from 1993 through the beginning of 2000 and beyond, the proportion of Stips rose, while the proportion of C&Rs declined. This reflects the large decrease in the issuance of C&Rs through the 1990's.

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Division of Workers' Compensation Lien Decisions

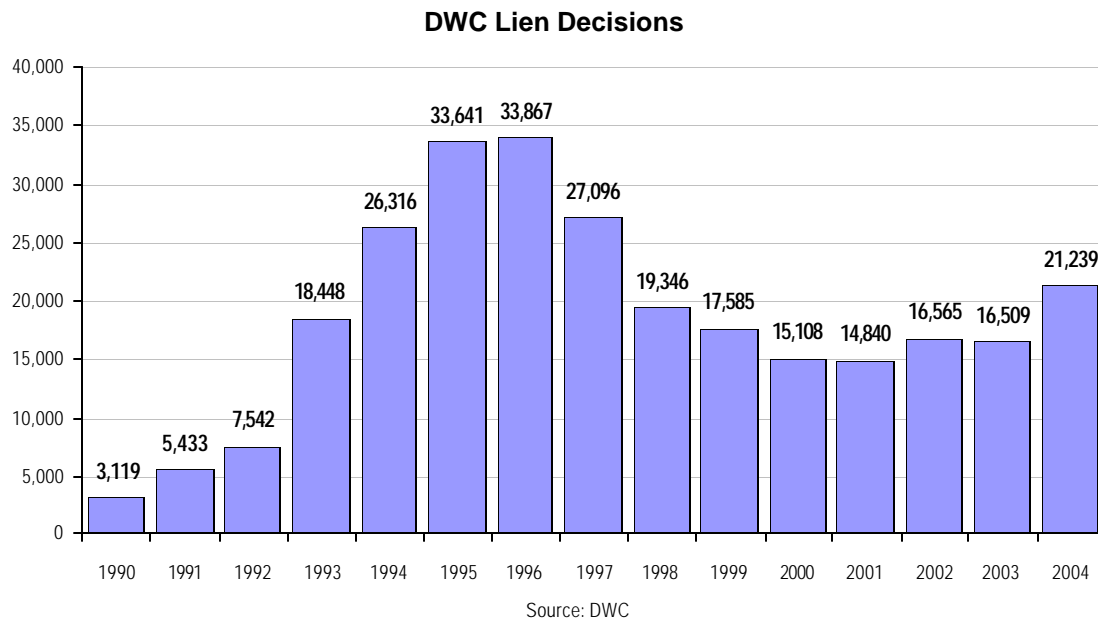
The DWC has been dealing with a large backlog of liens filed on WCAB cases. Many of the liens have been for medical treatment and medical-legal reports. However, liens are also filed to obtain reimbursement for other expenses:

- The Employment Development Department (EDD) files liens to recover disability insurance indemnity and unemployment benefits paid to industrially injured workers.
- Attorneys have an implied lien during representation of an injured worker. If an attorney is substituted out of a case and seeks a fee, the attorney has to file a lien.
- District Attorneys file liens to recover spousal and/or child support ordered in marital dissolution proceedings.
- A landlord or grocer will occasionally claim a lien for living expenses of the injured or his/her dependents.
- Although relatively rare now, a private disability insurance policy will occasionally file a lien on workers' compensation benefits on the theory that the proceeds from the benefits were used for living expenses of the injured worker.
- Some defendants will file liens in lieu of petitions for contribution where they have paid or are paying medical treatment costs to which another carrier's injury allegedly contributed.
- Liens are sometimes used to document recoverable (non-medical) costs, e.g., photocopying of medical records, interpreters' services and travel expenses.

These data, as shown in the following graph, indicate a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

Labor Code Section 4903.05, added by Senate Bill (SB) 228, requires that a filing fee of \$100 be charged for each initial lien filed by a medical provider, excluding the Veterans Administration, the Medi-Cal program, or public hospitals. SB 899 amended Section 4903.05 to provide that persons filing liens on behalf of medical providers may also pay the \$100 filing fee.

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It should be of concern that lien filings are increasing.

DWC Audit and Enforcement Program

Background

The 1989 California workers' compensation reform legislation established an audit function within the Division of Workers' Compensation (DWC) to monitor the performance of workers' compensation insurers, self-insured employers, and third-party administrators to ensure that industrially-injured workers are receiving proper benefits in a timely manner.

The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of workers' compensation benefits to industrially-injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.

AB 749 Changes to the Audit Program

Assembly Bill (AB) 749, effective January 1, 2003, resulted in major changes to California workers' compensation law and mandated significant changes to the methodologies for file selection and assessment of penalties in the audit program.

Labor Code Sections 129 and 129.5 were amended to assure that each audit unit will be audited at least once every five years and that good performers will be rewarded. A profile audit review of every audit subject will be done at least every five years. Any audit subject that fails to meet a profile audit standard established by the AD will be given a full compliance audit. Any audit subject that fails to meet or exceed the full compliance audit performance standard will be

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audited again within two years. Targeted profile audit reviews or full compliance audits may also be conducted at any time based on information indicating that an insurer, self-insured employer, or third-party administrator is failing to meet its obligations.

To reward good performers, profile audit subjects that meet or exceed the profile audit review performance standard will not be liable for any penalties but will be required to pay any unpaid compensation. Full compliance audit subjects that meet or exceed standards will only be required to pay penalties for unpaid or late paid compensation and any unpaid compensation.

Labor Code §129.5(e) is amended to provide for civil penalties up to \$100,000 if an employer, insurer, or third-party administrator has knowingly committed or (rather than and) has performed with sufficient frequency to indicate a general business practice acts discharging or administering its obligations in specified improper manners. Failure to meet the full compliance audit performance standards in two consecutive full compliance audits will be rebuttably presumed to be engaging in a general business practice of discharging and administering compensation obligations in an improper manner.

Review of the civil penalties assessed will be obtained by written request for a hearing before the WCAB rather than by application for a writ of mandate in the Superior Court. Judicial review of the Board's findings and order will be as provided §§5950 et seq.

Penalties collected under §129.5 and unclaimed assessments for unpaid compensation under §129 are credited to the Workers' Compensation Administration Revolving Fund.

Audit and Enforcement Unit Data

Following are various charts and graphics depicting workload data from 2000 through 2004. As noted on the charts, data before 2003 cannot be directly compared with similar data in 2003 and after because of the significant changes in the program effective January 1, 2003.

Overview of Audit Methodology

Selection of Audit Subjects

Audit subjects include insurers, self-insured employers, and third party administrators. Routine audit subjects are selected randomly.

The bases for the targeting of audit subjects by the Audit Unit are specified in 8 California Code of Regulations Section 10106.1(c), effective January 1, 2003:

- Complaints regarding claims handling received by the Division of Workers' Compensation.
- Failure to meet or exceed Full Compliance Audit Performance Standards.
- High Numbers of Penalties awarded pursuant to Labor Code Section 5814.
- Information received from the Workers' Compensation Information System.
- Failure to provide a claim file for a PAR.
- Failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit.

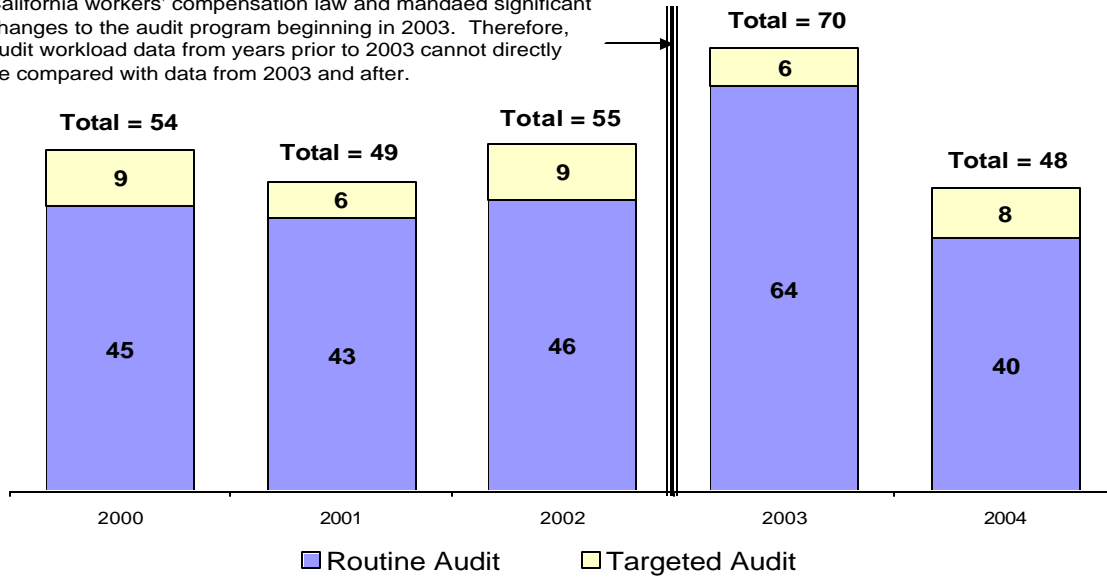
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Routine and Targeted Audits

The chart below shows the number of routine audits, target audits and the total number of audits conducted each year.

Routine and Targeted Audits

Please Note: Assembly Bill 749 resulted in major changes to California workers' compensation law and mandated significant changes to the audit program beginning in 2003. Therefore, audit workload data from years prior to 2003 cannot directly be compared with data from 2003 and after.



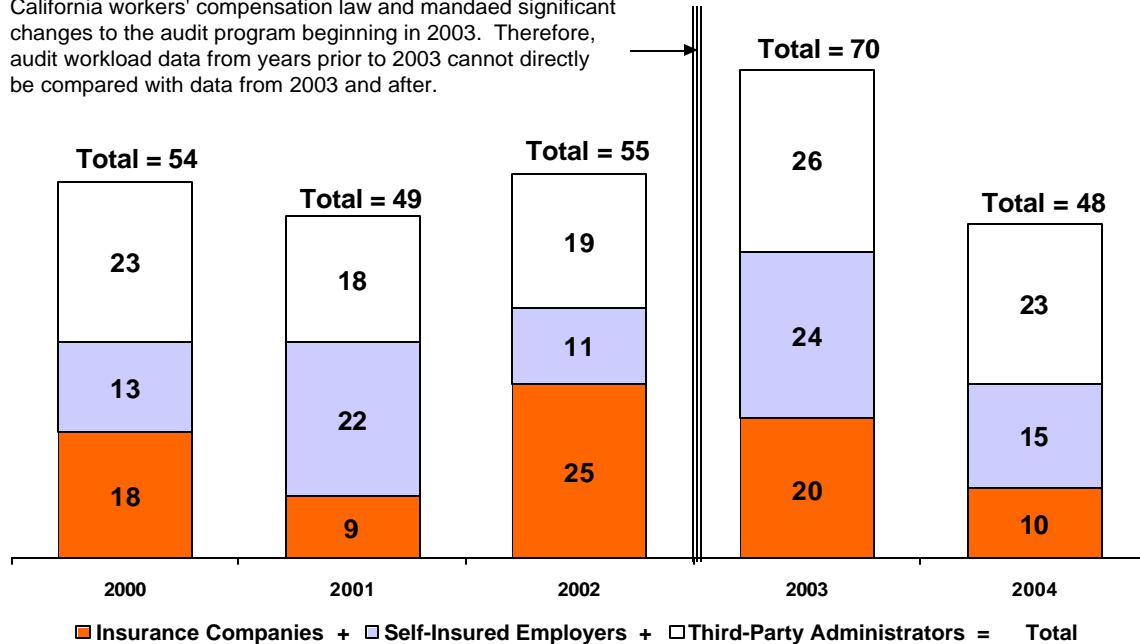
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Audits by Type of Audit Subject

The following graph depicts the total number of audit subjects each year with a breakdown by whether the subject is an insurer, a self-insured employer, or a third party administrator.

DWC Audits by Type of Audit Subject

Please Note: Assembly Bill 749 resulted in major changes to California workers' compensation law and mandated significant changes to the audit program beginning in 2003. Therefore, audit workload data from years prior to 2003 cannot directly be compared with data from 2003 and after.



Source: DWC Audit and Enforcement Unit

Selection of Files to be Audited

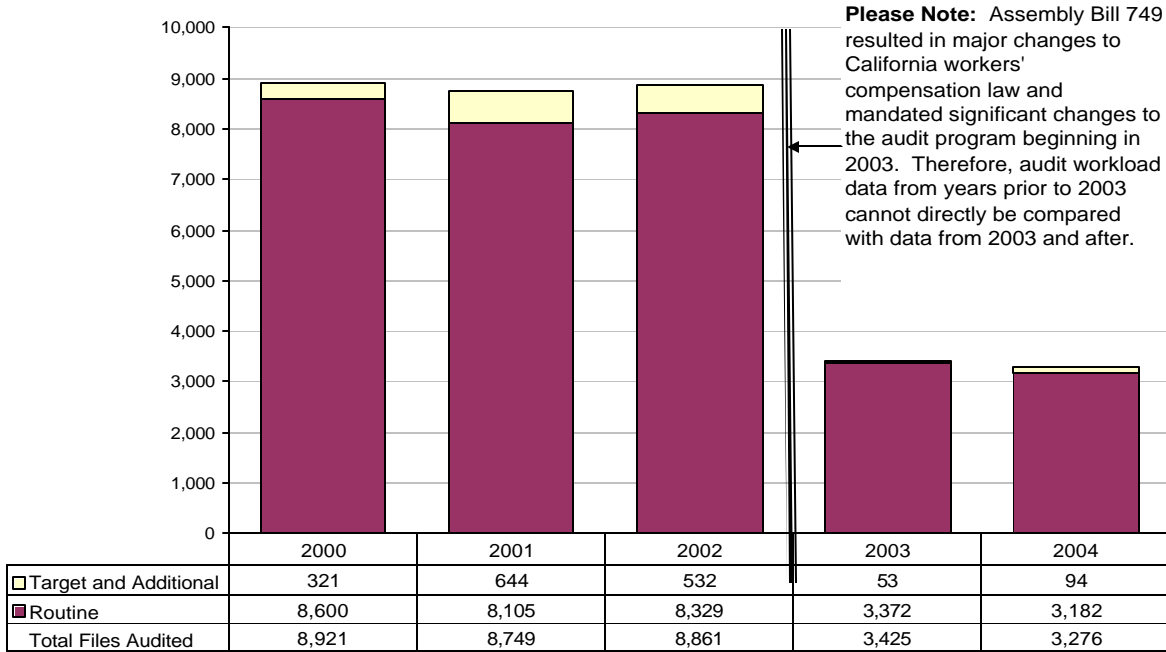
The majority of claim files are selected for audit on a random basis, with the number of indemnity and denied cases being selected based on the numbers of claims in each of those populations of the audit subject:

- Targeted files are selected because they have attributes that the audits are focusing on.
- Additional files include claims chosen based on criteria relevant to a target audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total number of claims at the adjusting location and the number of complaints received by the DWC related to claims-handling practices. Types of claims include indemnity, medical only, denied, complaint and additional.

The following chart shows the total number of files audited each year, broken down by the method used to select them.

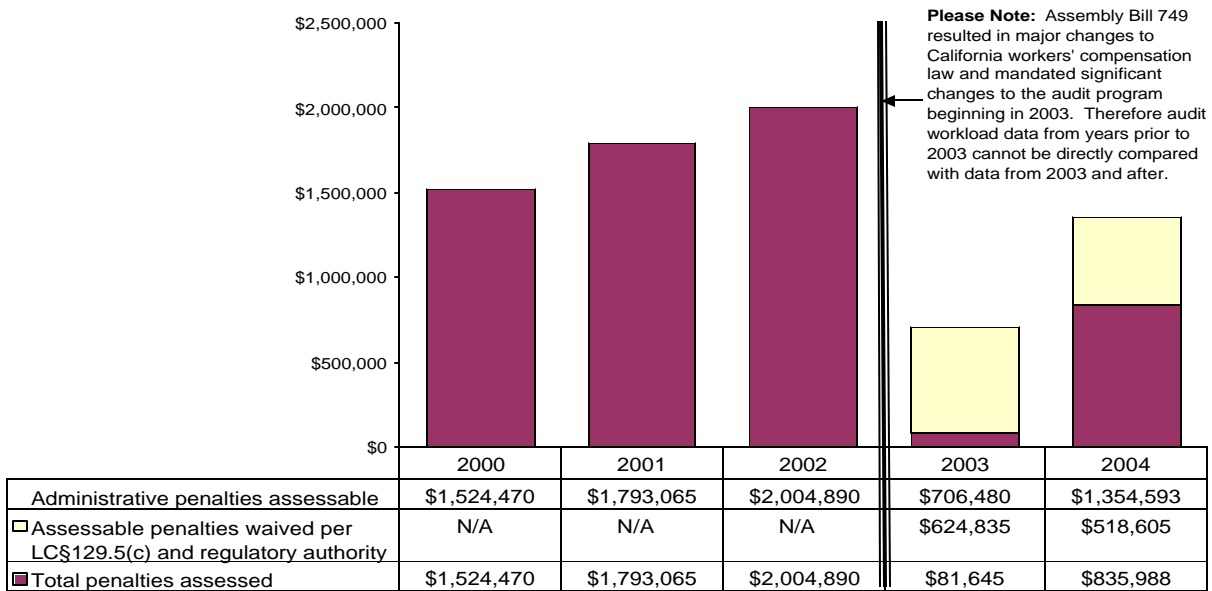
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Files Audited by Method of Selection



Audit Findings

DWC Audit Unit - Administrative Penalties

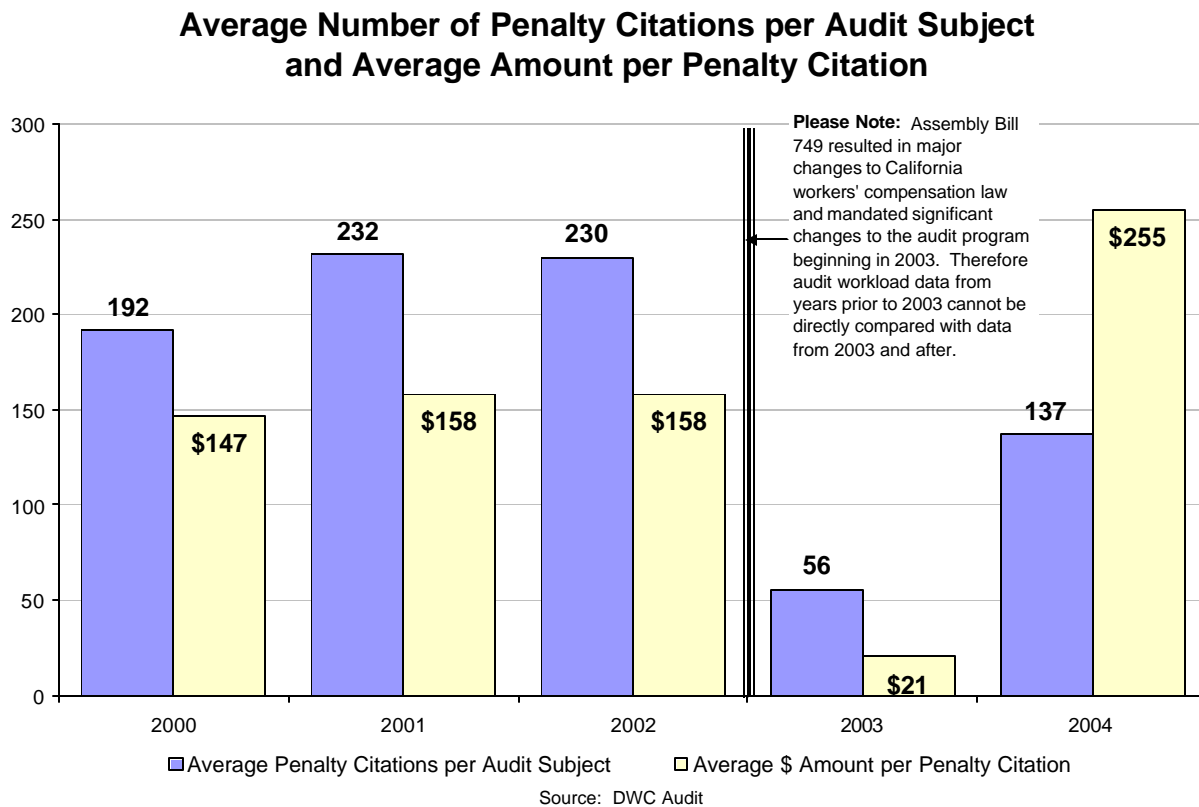


Source: DWC Audit

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As shown in the previous chart the administrative penalties assessed have changed significantly since the reform legislation changes to the Audit and Enforcement Program beginning in 2003.

The following chart shows the average number of penalty citation per audit subject each year and the average dollar amount per penalty citation.



Unpaid Compensation Due To Employees

Audits identify claim files where injured workers were owed unpaid compensation.

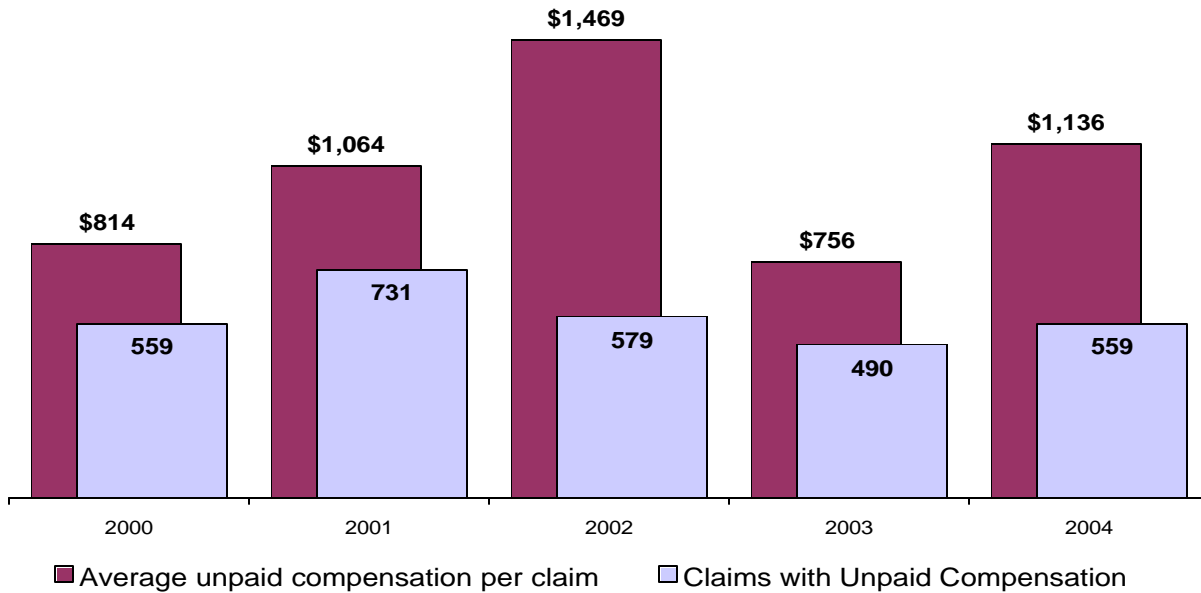
The administrator is required to pay these employees within 15 days after receipt of a notice advising the administrator of the amount due, unless a written request for a conference is filed within seven days of receipt of the audit report. When employees due unpaid compensation cannot be located, the unpaid compensation is payable by the administrator to the Workers' Compensation Administrative Revolving Fund (WCARF). In these instances, application by an employee can be made to the DWC for payment of monies deposited by administrators into this fund.

The first chart on the following page depicts the average number of claims per audit where unpaid compensation was found and the average dollar amount of compensation due per claim.

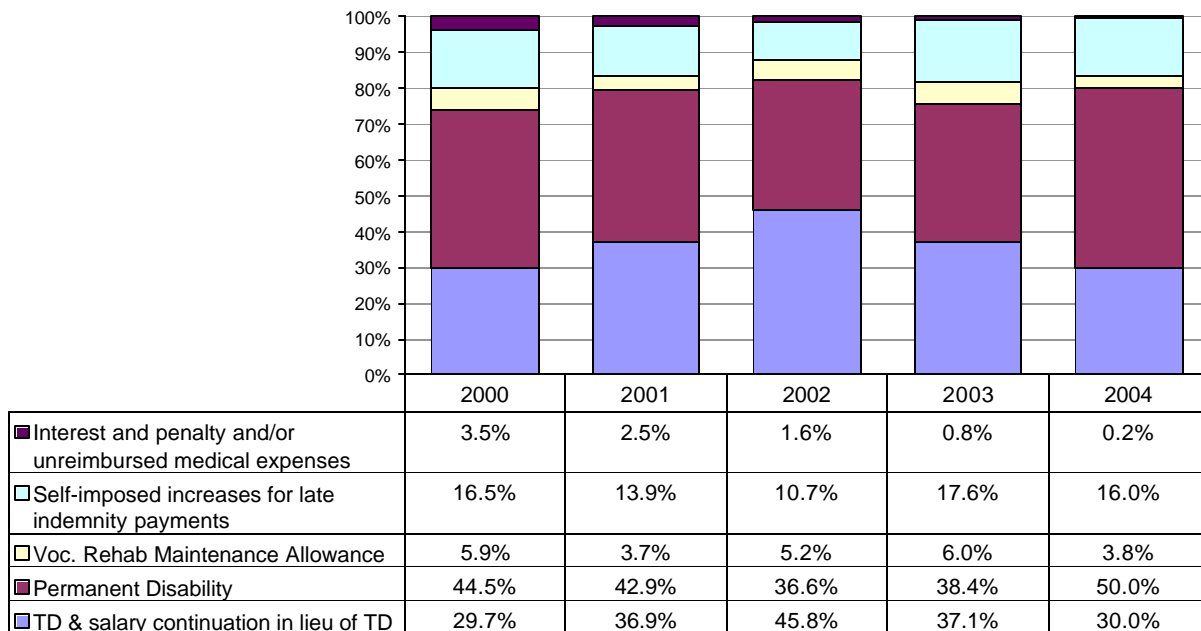
The second chart on the following page shows unpaid compensation each year, broken down by percentage of the specific type of compensation that was unpaid.

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DWC Audit Unit Findings of Unpaid Compensation Number of Claims / Average \$ Unpaid per Claim



Unpaid Compensation in Audited Files Type by Percentage of Total



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Frequency of Violations

A statewide frequency of the five key areas under review for violations used in determining the PAR and FCA performance standards was calculated after combining the individual audit findings. The frequency noted in each area is actually the ratio of files in which there is an assessment for a specific type of violation to the total number of randomly selected files in which the possibility of that type of violation exists.

Unpaid Indemnity

Of the randomly selected audited claims in which indemnity was accrued and payable, the percentage for assessable penalties for unpaid indemnity is:

- 2003 65 Audits passing the PAR standard: 13.24%
- 2003 4 Audits passing the FCA standard: 23.08%
- 2003 1 Audit failing all standards: 75.00%
- 2004 37 Audits passing the PAR standard: 12.02%
- 2004 5 Audits passing the FCA standard: 24.39%
- 2004 6 Audits failing all standards: 32.36%

Late First Payment of Temporary Disability or First Salary Continuation Notice When Salary Continuation is Paid in Lieu of Temporary Disability

Of the randomly selected audited claims with TD payments or first notice of salary continuation, the following percentage for assessable penalties for late paid first payment of TD or late first notice of salary continuation is:

- 2003 65 Audits passing the PAR standard: 24.57%
- 2003 4 Audits passing the FCA standard: 35.99%
- 2003 1 Audit failing all standards: 75.00%
- 2004 37 Audits passing the PAR standard: 24.59%
- 2004 5 Audits passing the FCA standard: 39.51%
- 2004 6 Audits failing all standards: 53.68%

Late First Payment of Permanent Disability, Vocational Rehabilitation Maintenance Allowance, and Death Benefits

Of the randomly selected audited claims with PD, vocational rehabilitation maintenance allowance, and death benefits payments, the following percentage for assessable penalties for late paid first payment of PD, vocational rehabilitation maintenance allowance, and death benefits is:

- 2003 65 Audits passing the PAR standard: 14.03%
- 2003 4 Audits passing the FCA standard: 29.87%
- 2003 1 Audit failing all standards: 0.00%
- 2004 37 Audits passing the PAR standard: 12.03%
- 2004 5 Audits passing the FCA standard: 32.10%
- 2004 6 Audits failing all standards: 40.80%

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Late Subsequent Indemnity Payments

Of the randomly selected audited claims with subsequent indemnity payments, the following percentage for assessable penalties for late subsequent indemnity payments is:

- 2003 65 Audits passing the PAR standard: 25.37%
- 2003 4 Audits passing the FCA standard: 39.17%
- 2003 1 Audit failing all standards: 100.00%
- 2004 37 Audits passing the PAR standard: 20.39%
- 2004 5 Audits passing the FCA standard: 45.27%
- 2004 6 Audits failing all standards: 26.10%

Failure or Late Provision of Agreed Medical Evaluator/Qualified Medical Evaluator Notices and Notices of Potential Eligibility for Vocational Rehabilitation

Of the randomly selected audited claims with requirement to issue the AME/QME notice and/or the notice of potential eligibility for vocational rehabilitation, the following percentage for assessable penalties for failure or late issuance is:

- 2003 65 Audits passing the PAR standard: 27.78%
- 2003 4 Audits passing the FCA standard: 39.87%
- 2003 1 Audit failing all standards: 20.00%
- 2004 37 Audits passing the PAR standard: 24.16%
- 2004 5 Audits passing the FCA standard: 31.39%
- 2004 6 Audits failing all standards: 57.08%

Performance Ratings

Each audit subject's performance rating is calculated following a review of a sample of randomly selected indemnity claims and is a composite score based on performance in specific key areas.

Ratings are based on the frequency and severity of violations, with a weighting factor emphasizing the gravity of violations involving the failure-to-pay compensation. The higher the rating of an audit subject, the worse the performance.

Ratings are calculated based on:

- The frequency of claims with unpaid compensation and the amounts of unpaid compensation found in the sample of randomly selected undisputed claims.
- The frequency of claims with violations involving late first temporary disability (TD) payments or first notices of salary continuation.
- The frequency of claims with violations involving late first payments of permanent disability (PD), vocational rehabilitation maintenance allowance, and death benefits.
- The frequency of claims with violations involving late subsequent (scheduled) indemnity payments.

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- The frequency of claims with violations involving the failure to timely issue Notices of Potential Eligibility for Vocational Rehabilitation and Notices advising injured workers of their rights for Qualified Medical Examinations to determine PD.

If the audit subject's performance rating meets or exceeds (i.e., is lower than) the worst 20 percent of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit, the Audit Unit will issue Notices of Compensation Due pursuant to Section 10110 but will assess no administrative penalties for violations found in that audit.

If the audit subject's performance rating is higher than the worst 20 percent of performance ratings as calculated based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years before the year preceding the current audit, the Audit Unit will conduct an additional audit by randomly selecting and auditing an additional sample of indemnity claims.

Specific findings for all audit subjects may be found in the DWC Audit Unit Annual Reports, available at <http://www.dir.ca.gov/dwc/audit.html>.

For further information...



DWC Annual Audit Reports may be accessed at <http://www.dir.ca.gov/dwc/audit.html>



CHSWC Report on the Division of Workers' Compensation Audit Function (1998) - available at www.dir.ca.gov/chswc

DWC Policy and Procedure

On October 6, 2003, the DWC and WCAB jointly issued a newly revised Policy and Procedural Manual. The manual provides guidance to DWC and WCAB staff and to the public, concerning matters involving the claims adjudication process.

This was the first complete revision of the manual to occur in several decades. The process encompassed many hours and months of work by a diverse group consisting of a WCAB commissioner and deputy commissioner and all levels of the trial level judiciary. During 2004, the policy and procedural revision committee focused on preliminary revision of commonly used forms, such as the Compromise and Release (C&R) and stipulations with request for award.

The Policy and Procedural Manual will be revised as necessary in the future to address new issues that arise. The most current version is available online at the DWC/WCAB website.

Another significant procedural change in 2004 arose from the provision of SB 899 that provides up to \$10,000 in medical treatment to an employee, governed by industrial treatment guidelines, during the claims investigation process. The WCAB chairman and the DWC Administrative Director (AD) issued a joint implementation memorandum and DWC Newsline in June 2004, authorizing use of the expedited hearing procedure to resolve liability disputes for the medical treatment benefit.

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Disability Evaluation Unit

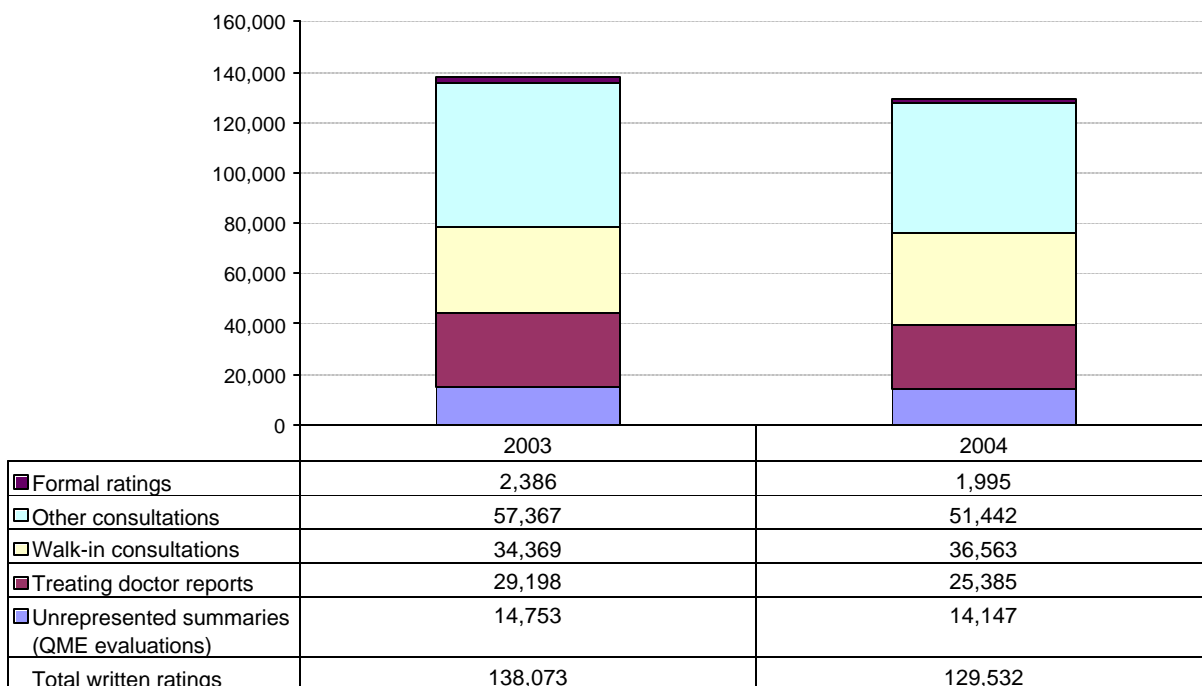
The DWC Disability Evaluation Unit (DEU) determines permanent disability ratings by assessing physical and mental impairments in accordance with the Permanent Disability Rating Manual. The ratings are used by workers' compensation judges, injured workers, and insurance claims administrators to determine permanent disability benefits.

The DEU prepares three types of ratings: formal, done at the request of a workers' compensation judge; consultative, done at the request of an attorney or DWC information and assistance officer; and summary, done at the request of a claims administrator or injured worker. Summary ratings are done only on non-litigated cases, and formal consultative ratings are done only on litigated cases.

The rating is a percentage that estimates how much a job injury permanently limits the kinds of work the injured employee can do. It is based on the employee's medical condition, date of injury, age when injured, occupation when injured, how much of the disability is caused by the employee's job, and his or her diminished future earning capacity. It determines the number of weeks that the injured employee entitled to permanent disability benefits.

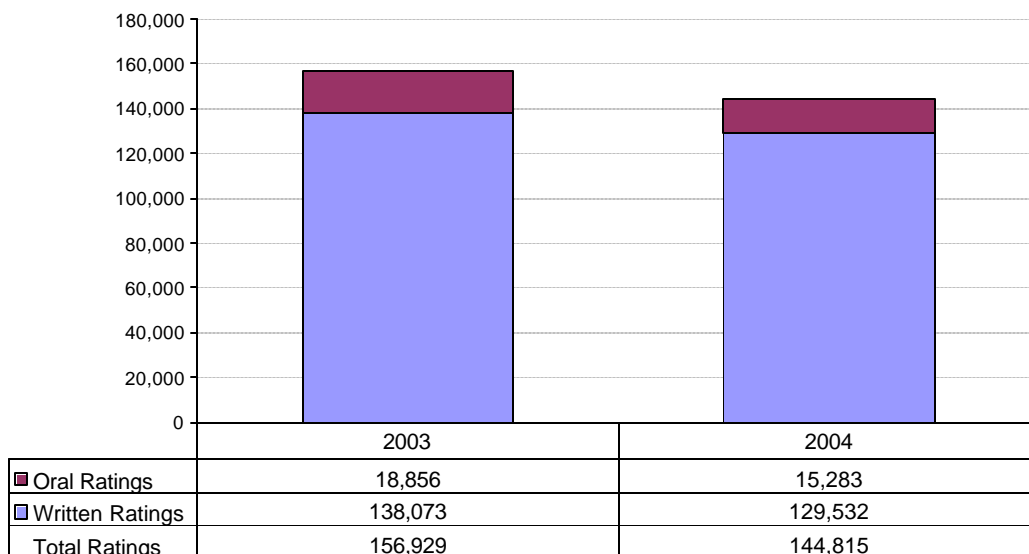
The following charts depict the DEU workload during 2003 and 2004. The first chart shows the written ratings produced each year by type. The second chart illustrates the total number of written and oral ratings each year.

DEU Written Ratings 2003 and 2004



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DEU Ratings by Type 2003 and 2004



Source: DWC Disability Evaluation Unit

Health care Organizations and Medical Provider Networks

Health Care Organization Program

The Health Care Organization (HCO) program, established by the 1993 Workers' Compensation reform package, expanded the use of managed care techniques in the workers' compensation system. This was viewed as a means of reducing medical costs and facilitating better management of workers' compensation cases.

HCOs provide medical care to employees with job-related injuries or illnesses in a managed care setting. Insurance carriers and self-insured employers may contract with a certified HCO as a way of reducing workers' compensation costs while at the same time helping to ensure that injured workers receive quality medical care for their injuries.

Under the initial program, an employer in an HCO gains additional medical control over the care of the injured employee, ranging from 90 days (if no group health insurance coverage is offered) to 365 days (if the employee's provider of non-occupational health care is also in the HCO network).

AB 749 made changes to the HCO program effective January 1, 2003:

- Employers are no longer required to offer at least two HCOs to employees; employers may contract with only one HCO.
- Employees must give written affirmative choice annually to select an HCO or pre-designate a personal physician, personal chiropractor or personal acupuncturist.

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Employees who do not designate a personal physician, personal chiropractor or personal acupuncturist shall be treated by the HCO.

- Employer control of medical treatment has been changed to 90 days, if no non-occupational health care coverage from the employer, or 180 days, if the employer provides non-occupational health care coverage as well.
- HCO certification has been simplified. Healthcare Management Organizations (HMOs) certified by the Department of Managed Health Care (DMHC) are “deemed” to be HCOs if they are in good standing with DMHC and meet requirements for occupational treatment and case management required of other HCOs.

The DWC reports that there are about 200,000 employees enrolled in the HCO program as of October 2005

For further information...



The latest information on Health Care Organizations may be obtained at www.dir.ca.gov.

Current Health Care Organizations

(As of October 2005)

With Enrollees

Intracorp Plan A
CompPartners Access
CompPartners Direct
First Health Select and Primary
CorVel
MedEx and MedEx 2
Kaiser - North

No Enrollees (Using HCO network as deemed entity for Medical Provider Network products)

Astrasano (Concentra)
Pac Med
Network HCO
Genex

Source: DWC

Medical Provider Networks

SB 899 added Labor Code Section 4616 which provides that, beginning January 1, 2005, employers or insurers may establish networks to provide medical treatment to injured employees.

A Medical Provider Network (MPN) is an entity or group of health care providers set up by an insurer or self-insured employer and approved by DWC's administrative director to treat workers injured on the job. Each MPN must include a mix of doctors specializing in work-related injuries and doctors with expertise in general areas of medicine. MPNs are required to meet access to care standards for common occupational injuries and work-related illnesses. As of September 9, 2005, there were 938 approved MPNs.

SB 899 also added Labor Code Section 4616.7 which provides that the following organizations are deemed to meet all or specified parts of the eligibility requirements to be networks:

- Health Care Organization licensed under Labor Code Section 4600.5.
- Health Care Service Plan licensed pursuant to the Knox-Keene Act.
- Group disability policy for medical expenses under Insurance Code Section 106(b).
- Taft-Hartley Act health and welfare fund.

As shown in the box above, four health care organizations are utilizing the HCO Network as deemed entities for MPN products under the provisions of Labor Code Section 4616.7.

Information and Assistance Unit

The DWC Information and Assistance Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning the rights, benefits and obligations under California's workers' compensation laws. DEU, often the first DWC contact for injured workers, plays a major role in reducing litigation before the WCAB.

In the 2003 calendar year, the DWC Information and Assistance (I&A) Unit:

- Handled 432,495 calls from the public.
- Reviewed 13,788 settlements.
- Conducted 30,495 face-to-face meetings with injured workers at the counter.
- Made 122 public presentations.

In the 2004 calendar year, the DWC Information and Assistance (I&A) Unit:

- Handled 400,929 calls from the public.
- Reviewed 12,250 settlements.
- Conducted 24,283 face-to-face informal meetings with members of the public seeking advice on workers' compensation matters.
- Made 22 public presentations, in addition to regular monthly workshops for injured workers at 8 district offices.

After the enactment of SB 899 in April 2004, DWC held a special three-day statewide training seminar for all I&A officers, as well as other DWC staff, to provide early guidance on implementing the new reform law. Later in the year, efforts commenced to revitalize the monthly workshops in all 24 district offices and to update all I&A guides and fact sheets.

Uninsured Employer Fund

Claims are paid from the Uninsured Employers Fund (UEF) when illegally uninsured employers fail to pay workers' compensation benefits awarded to their injured employees by the Workers' Compensation Appeals Board. The number of new uninsured employer fund cases for the past three fiscal years are shown below:

Fiscal Year 2001/2002 = 1001

Fiscal Year 2002/2003 = 1083

Fiscal Year 2003/2004 = 1251

DWC Staffing

In fiscal year 2004/05, DWC was augmented by 293 new positions as a result of implementation of workers' compensation reforms in 2003, Assembly Bill (AB) 227/SB 228, and in 2004, SB 899, and restoration of baseline positions in the district offices.

As of April 15, 2005, DWC has 1172.4 authorized positions, of which 900 are filled and 272.4 are vacant. Since the start of this fiscal year, DWC has hired 160 new people from outside

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DWC to fill vacant positions and has promoted 134 existing DWC staff to other positions within the division.

If DWC continues to hire new staff at the rate it has recently achieved (net gain of approximately 25 new staff per month), all the vacant positions would be filled within about 12 months.

Adjudication Simplification Efforts

Division of Workers' Compensation Information System

The California Workers' Compensation Information System (WCIS) is intended to be an information source to help the AD and other State policy makers carry out their decision-making responsibilities and to provide accurate and reliable statistical data and analyses to other stakeholders in the industry. The specific legislative mandate for California's WCIS is that it should provide information in a cost-effective manner for:

- Managing the workers' compensation system.
- Evaluating the benefit-delivery system.
- Assessing the adequacy of indemnity payments.
- Providing data for research.

The WCIS has been collecting information about workers' compensation injuries via electronic (computer-to-computer) data interchange since March 2000. Since then, the system has collected over 4 million employer's first report of injuries, as well as subsequent payments reports pertaining to 800,000 unique indemnity claims. Well over 200 claims administrators currently provide data to the WCIS, representing all segments of the industry in California.

Some of the uses of the WCIS include the creation of several informational tables and reports that have been posted to the WCIS website which give, for example, the distributions of injuries by age, gender, part of body, etc. Data are provided regularly to state agencies such as Department of Health Services (DHS) and Division of Occupational Safety and Health (DOSH) for selected injuries, and the WCIS has been used to create special analyses for Division of Labor Statistics and Research (DLSR), CSHWC, and the Employment Development Department (EDD). Additionally, WCIS data have been used for law-enforcement related to fraud and for analyzing claim denial for the California Workers' Compensation Insurance Rating Bureau (WCIRB). Outside researchers, such as at the University of California San Francisco (UCSF), also have been provided with data extracts from the WCIS, and DWC is initiating a quarterly timeliness of (claims) payments report at the request of a state legislator.

Beginning in March 2006, DWC will collect detailed medical treatment and billing data. With these data supplementing existing information regularly collected, DWC researchers and others will be able to perform additional analyses—useful, for example, for the creating, evaluating and maintaining of fee schedules; examining medical provider treatment patterns; identifying potential areas of employer, employee, and provider fraud and abuse; evaluating impacts of myriad legislative changes affecting medical and benefit costs; and studying a variety of other public policy issues.

CHSWC has been made aware of stakeholder concerns regarding the design and implementation of WCIS. CHSWC will continue to monitor and report on its progress.

Carve-outs: Alternative Workers' Compensation Systems

A provision of the workers' compensation reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as carve-outs.

CHSWC is monitoring the carve-out program, which is administered by the DWC.

CHSWC Study of Carve-Outs

CHSWC engaged in a study to identify the various methods of alternative dispute resolution that are being employed in California carve-outs and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

Since carve-out programs have operated only since the mid-1990's, the data collected are very preliminary and not statistically significant. The study team found indications that neither the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work (RTW), nor the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have occurred.

Impact of Senate Bill 228

SB 228 adds Labor Code Section 3201.7, which establishes a new carve-out program in any unionized industry, in addition to the existing carve-out in the construction industry (already covered in current law by Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the AD. The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:
 - An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.

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- The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
- The use of an agreed, limited list of qualified medical evaluators (QMEs) and agreed medical evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
- A joint labor-management safety committee.
- A light-duty, modified job or return-to-work program.
- A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more equals \$50,000, and the minimum group premium equals \$500,000.
- Any agreement must include right of counsel throughout the alternative dispute resolution process.

Impact of Senate Bill 899

Construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

Carve-Out Participation

As shown in the following table, participation in the carve-out program has grown, with significant increases in the number of employees, work hours and amount of payroll.

Carve Out Participation	1995	1996	1997	1998	1999	2000*	2001*	2002	2003*	2004*
Employers	242	277	550	683	442	260	143	512	316	462
Work Hours (millions)	6.9 million	11.6 million	10.4 million	18.5 million	24.8 million	16.9 million	7.9 million	29.4 million	22.9 million	25.4 million
Employees (full-time equivalent)	3,450	5,822	5,186	9,250	12,395	8,448	3,949	14,691	11,449	12,700
Payroll (millions \$)	\$157.6 million	\$272.4 million	\$242.6 million	\$414.5 million	\$585.1 million	\$442.6 million	\$201.9 million	\$634.2 million	\$623.6 million	\$1.2 billion

* Please note that data is incomplete

Source: DWC

A listing of employers and unions in carve-out agreements follows.

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Status of Carve-out Agreements as of May 2005

The following charts show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by the DWC.

Construction Carve-out Participants as of May 10, 2005 **Labor Code Section 3201.5**

*Key: 1 = one employer, one union; 2 = one union, multi employer; 3 = project labor agreement

No.*	Union	Company	Exp. Date
1. (3)	CA Building & Construction Trades Council	Metropolitan Water Dist. So. Ca-Diamond Valley Lake	11/07/06
2. (2)	Internat'l Brotherhood of Electrical Workers IBEW	NECA--National Electrical Contractors Assoc.	8/14/07
3. (2)	So. Ca. Dist. of Carpenters & 19 local unions	6 multi-employer groups—1000 contractors.	8/14/07
4. (2)	So. Ca. Pipe Trades Council 16	Multi employer—Plumbing & Piping Industry Coun.	8/24/07
5. (1)	Steamfitters Loc. 250	Cherne—two projects completed in 1996	Complete
6. (1)	Intern'l Union of Petroleum & Industrial Wkrs	TIMEC Co., Inc./TIMEC So. CA., Inc.	7/31/07
7. (3)	Contra Costa Bldg & Const. Trades Council	Contra Costa Water District - Los Vaqueros	Complete
8. (2)	So. CA Dist. Council of Laborers	Assoc. Gen'l Contr's of CA, Bldg. Industry Assoc. – So. CA., So CA Contrs' Assoc., Eng. Contrs' Assoc.	7/31/08
9. (3)	Ca. Bldg. & Construction Trades Council	Metropolitan Water Dist. So. Ca. Inland Feeder-Parsons	Ended 12/31/02
10. (3)	Bldg. & Construction Trades Council of Alameda County	Parsons Constructors, Inc. National Ignition Facility—Lawrence Livermore	9/23/06
11. (2)	District Council of Painters	Los Angeles Painting & Decorating Contrs Assoc.	10/29/06
12. (1)	Plumbing & Pipefitting Local 342	Cherne Contracting - Chevron Base Oil 2000 project	Complete
13. (3)	LA Bldg & Const. Trades Coun. AFL-CIO	Cherne Contracting —ARCO	Complete
14. (2)	Operating Engineers Loc. 12	So. California Contractors' Assoc.	4/1/08
15. (2)	Sheet Metal International Union	Sheet Metal-A/C Contractors National Assoc	4/1/08
16. (3)	Bldg & Construction Trades Council San Diego	San Diego Cny Water Authority Emer. Storage Project	2/2006
17. (3)	LA County Bldg. & Const.Trades Council	Cherne Contracting – Equilon Refinery – Wilmington	3/1/07
18. (3)	Plumbers & Steamfitters	Cherne Contracting – Chevron Refinery – Richmond	7/1/05
19. (3)	Plumbers & Steamfitters	Cherne Contracting – Tesoro Refinery – Martinez	7/1/05
20. (3)	LA/Orange Counties Bldg. & Const.Trade Coun	Cherne Contracting – Chevron Refinery – El Segundo	7/26/05
21. (2)	District Council of Iron Wkrs- State of CA and Vicinity	California Ironworker Employers Council	2/25/06
22. (2)	Sheet Metal Wkr Intern'l Assoc #105	Sheet Metal & A/C Labor Management Safety Oversight Committee (LMSOC)	4/17/06
23. (2)	United Union of Roofers, Waterproofers and Allied workers, Local 36 and 220	Southern California Union Roofing Contractors Association	4/7/06
24. (2)	United Union of Roofers, Waterproofers and Allied Workers, Locals 40, 81 & 95	Associated Roofing Contractors of the Bay Area Counties	7/31/04

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No.*	Union	Company	Exp. Date
25. (2)	United Assoc.- Journeyman & Apprentices-- Plumbers & Pipefitters, Local #447	No.CA Mechanical Contractors Assoc & Assoc. Plumbing & Mechanical Contractors of Sacto Inc.	11/7/06
26. (20)	Operatives Plasterers and Cement Masons International Association, Local 500 & 600	So. California Contractors Association, Inc.	4/1/08
27. (1)	International Unions of Public & Industrial Workers	Irwin Industries, Inc.	3/23/07
28. (2)	PIPE Trades Dist. Council No. 36	Mechanical Contractors Council of Central CA	4/14/07
29. (2)	No. CA Carpenters Reg'l Council	Basic Crafts Workers' Comp. Benefits Trust Fund	8/30/07
30. (2)	No. CA District of Laborers	Basic Crafts Workers' Comp. Benefits Trust Fund	8/30/07
31. (2)	Operating Engineers Local 3	Basic Crafts Workers' Comp. Benefits Trust Fund	08/30/07
32. (1)	Industrial, Professional and Technical Workers Inter'l Union, SIUNA, AFL-CIO	Irish Construction	12/20/07
33. (3)	Building Trades Council of Los Angeles- Orange County	Los Angeles Community College District Prop A & AA Facilities Projects	05/06/08

Non Construction Industry Carve-out Participants as of May 2005 (Labor Code Section 3201.7)

No.	Union	Company	Permission to Negotiate Date/Expires	Application for Recognition of Agreement	Agreement Recognition Letter Date
1.	United Food & Commercial Workers Union Local 324	Super A Foods-2 locations 76 employees	09/01/04- 09/01/05		
2.	United Food & Commercial Workers Union Local 1167	Super A Foods – Meat Department 8 employees	09/01/04- 09/01/05		
3.	Teamsters Cal. State Council-Cannery & Food Processing Unions, IBT, AFL-CIO	Cal. Processors, Inc. Multi-Employer Bargaining Representative	7-06-04/ 7-05-05		
4.	United Food & Commercial Workers Union Local 770	Super A Foods – 10 locations - ~ 283 members	09/01/04- 09/01/05		
5.	United Food & Commercial Workers Union Local 1036	Super A Foods - All employees, except those engaged in janitorial work or covered under a CBA w/Culinary Workers and demonstrators	09/01/04- 09/01/05		
6.	Operating Engineers-Loc 3 Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04- 12/09/05	02/15/05	02/28/05
7.	Laborers - Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04- 12/09/05	02/15/05	02/28/05
8.	Carpenters- Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04- 12/09/05	02/15/05	02/28/05

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For further information...



The latest information on carve-outs may be obtained at www.dir.ca.gov. Select "workers' compensation" then "Division of Workers' Compensation," then "Construction Industry Carve-Out Programs" (under "DWC/WCAB Organization and Offices").



CHSWC Report: "Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry" (1999). Available at www.dir.ca.gov/CHSWC/chswc.html.



Carve-outs: A guidebook for Unions and Employers in Workers' Compensation." CHSWC (2004). Available at www.dir.ca.gov/CHSWC/chswc.html.

Fraud

Background

During the past decade, there has been an energetic and rapidly growing campaign in the State against workers' compensation fraud. This report on the nature and results of that campaign is based primarily on information obtained from the California Department of Insurance (CDI) Fraud Division, as well as applicable Insurance Code and Labor Code sections and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

Suspected Fraudulent Claims

Suspected Fraudulent Claims (SFC) are reports of suspected fraudulent activities received by CDI from various sources, including insurance carriers, informants, witnesses, law enforcement agencies, fraud investigators, and the public.

According to the CDI Fraud Division, the number of suspected fraudulent claims has varied from year to year. Several reasons for this fluctuation include:

- Lower claims frequency.
- Removal of major medical and legal mills involved in illegal activities.
- Reduction in insurers' SIUs.
- Fewer insurance companies in the California workers' compensation market.
- Deterrence effect resulting from statewide anti-fraud efforts of local district attorneys, the Fraud Division and the insurance industry.

Workers' Compensation Fraud Suspect Arrests

After a fraud referral, an investigation must take place before any arrests are made. The average time from referral to arrest is usually around nine months. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year.

Fiscal Year	Suspected Fraudulent Claims	Fraud Suspect Arrests
1992-93	8,342	125
1993-94	7,284	195
1994-95	4,004	344

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Fiscal Year	Suspected Fraudulent Claims	Fraud Suspect Arrests
1995-96	3,947	406
1996-97	3,281	456
1997-98	4,331	424
1998-99	3,363	456
1999-00	3,362	478
2000-01	3,548	382
2001-02	2,968	290
2002-03	3,544	369
2003-04	5,122	481

Source: California Department of Insurance, Fraud Division

Workers' Compensation Fraud Suspect Convictions

Based on information from the Fraud Division and CWCI [Bulletin\[s\]](#), the number of workers' compensation fraud suspects *convicted* annually is as follows:

Year	Fraud Suspect Prosecutions	Fraud Suspect Convictions
1993-94 Fiscal Year	363	181
1994-95 Fiscal Year	422	198
1995-96 Fiscal Year	346	248
1996-97 Fiscal Year	567	331
1997-98 Fiscal Year	637	375
1998-99 Fiscal Year	869	384
1999-2000 Fiscal Year	980	390
2000-01 Fiscal Year	822	367
2001-02 Fiscal Year	659	263
2002-03 Fiscal Year	739	293
2003-04 Fiscal Year	1,003	425

Source: California Department of Insurance, Fraud Division and California Workers' Compensation Institute

Workers' Compensation Fraud Investigations

Types of WC Fraud Investigations

The following table indicates the number and types of investigations opened and carried for fiscal years 2001-02 and 2002-03. Applicant fraud appears to be the area generating the most cases followed by premium fraud and medical provider fraud.

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Type of Investigation	Fiscal Year 2001-02 Cases Number / Percent		Fiscal Year 2002-03 Cases Number / Percent		Fiscal Year 2003-04 Cases Number / Percent	
Applicant	1,293	79.37%	1,263	72.63%	1,177	60.14%
Premium	159	9.76%	207	11.90%	242	12.36%
Fraud Rings	1	0.06%	7	0.40%	39	1.99%
Capping	6	0.37%	5	0.28%	5	0.25%
Medical Provider	98	6%	97	5.60%	97	4.95%
Insider	8	0.49%	6	0.34%	14	0.71%
Other	64	3.93%	93	5.3%	56	2.86%
Uninsured	N/A		61	3.5%	327	16.71%
TOTAL	1,629		1,739		1,957	

Source: California Department of Insurance, Fraud Division

Geographically, the great majority of suspected fraud cases in 2003 and 2004 came from Los Angeles County (30 percent) followed by Orange County (9 percent and 8 percent) and San Diego County (7 percent).

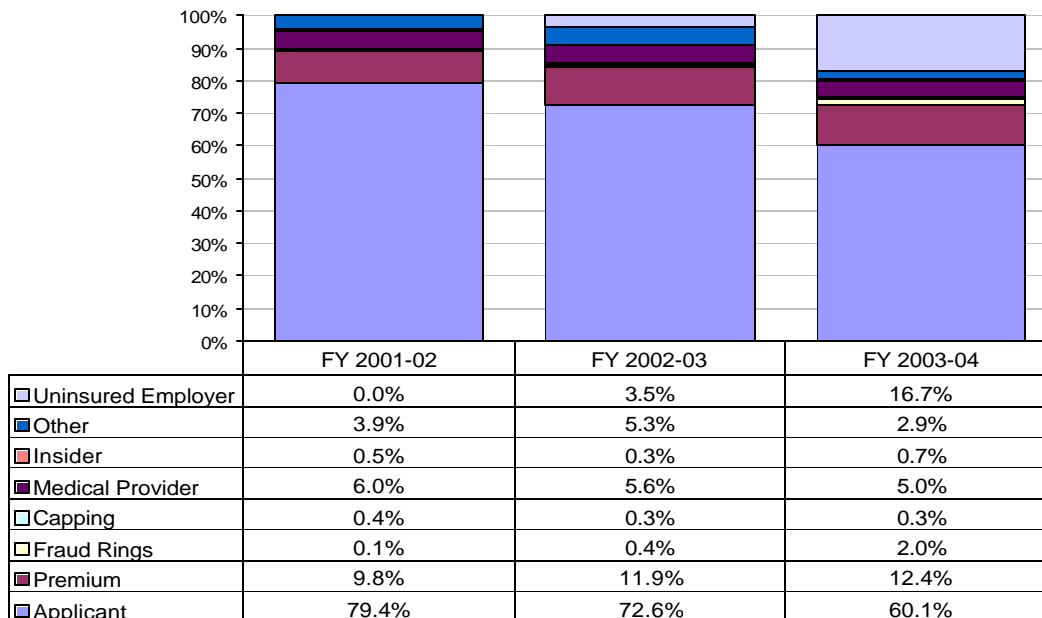
Trends in WC Fraud Investigations

The chart below illustrates the changing focus of workers' compensation investigations over the last three fiscal years, by showing the what types of investigation comprise what percentage of all the investigations each year. For example, investigations of applicants were nearly 80 percent of all investigations during 2001-02; in other words, 8 out of 10 of all investigations were directed at applicants.

As seen in the chart, the focus of the investigations has been changing. Applicant fraud investigations have dropped from nearly 80 percent of the total in 2001-02 to just over 60 percent of the total number of investigations. At the same time, there has been an increase in the in the percentage of investigations of uninsured employers, fraud rings, and premium fraud, while the medical provider fraud investigation percentage has dropped slightly.

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Type of Fraud Investigations by Percentage of Total



Underground Economy

While most California businesses comply with health, safety and workers' compensation regulations, there are businesses that do not. Those businesses are operating in the "underground economy". Such businesses may not have all their employees on the official company payroll, nor are all of the wages paid to employees reflect their real job duties. Underground economy businesses are therefore competing unfairly with those which comply with the laws.

According to EDD the California underground economy is estimated at \$60 billion to \$140 billion.⁴⁴

Potential Areas for Improvement in Workers' Compensation Anti-fraud Efforts

The California State Auditor Report "Workers' Compensation Fraud: Detection and Prevention Efforts Are Poorly Planned and Lack Accountability," published in April 2004, reported that:

- Currently, 30 million dollars a year is spent on anti-fraud activities seemingly without an overall strategy to combat workers' compensation fraud.
- Baselines for measuring the level of fraud have not been developed. There is currently no way to evaluate if anti-fraud efforts have reduced the overall cost that fraud adds to the system by as much or more than what is spent annually to fight it.
- "Efforts to detect and prevent workers' compensation fraud are inadequate."

⁴⁴ http://www.edd.ca.gov/taxrep/txueoind.htm#What_Does_It_Cost_You

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- There is a lack of cooperation between agencies in fighting workers' compensation fraud.

Medical-legal Expenses

Reform legislation changes to the medical-legal process were intended to reduce both the cost and the frequency of litigation. Starting in 1989, legislative reforms restricted the number and lowered the cost of medical-legal evaluations needed to determine the extent of permanent disability (PD). The reform legislation also limited the workers' compensation judge to approving the PD rating proposed by one side or the other (baseball arbitration). In addition, the Legislature created the QME designation and increased the importance of the treating physician's reports in the PD determination process.

In 1995, CHSWC contracted with the Survey Research Center at University of California Berkeley to assess the impact of the workers' compensation reform legislation on the workers' compensation medical-legal evaluation process.

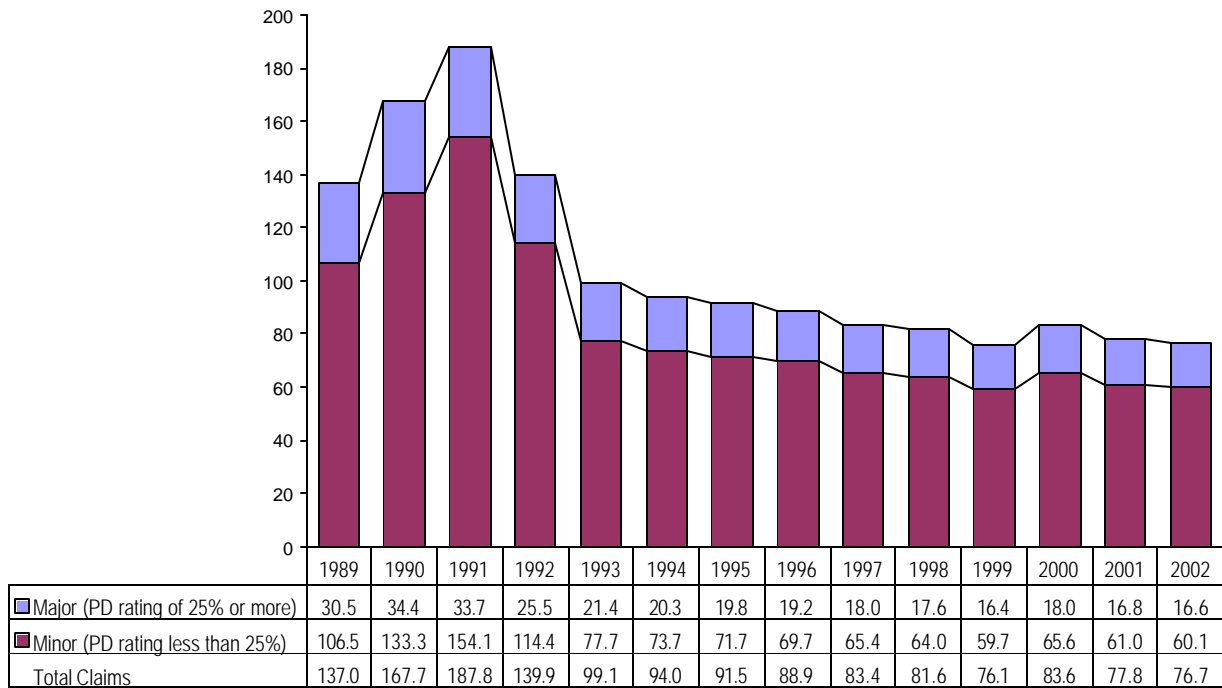
This ongoing study has determined that during the 1990's, the cost of medical-legal examinations has seen dramatic improvement. As shown in the following discussions, this is due to reductions in all the factors that contribute to the total cost.

Permanent Disability Claims

The following chart displays the number of permanent partial disability (PPD) claims during each calendar year since 1989. Through 1993, the Workers' Compensation Insurance Rating Bureau (WCIRB) created these data series from Individual Case Report Records submitted as part of the Unit Statistical Report. Since that time, the series has been discontinued, and estimates for 1994 and subsequent years are based on policy-year data adjusted to the calendar year and information on the frequency of all claims, including medical-only claims, that are still available on a calendar-year basis

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Permanent Partial Disability Claims at Insured Employers (In thousands, by year of injury)



Data Source: WCIRB

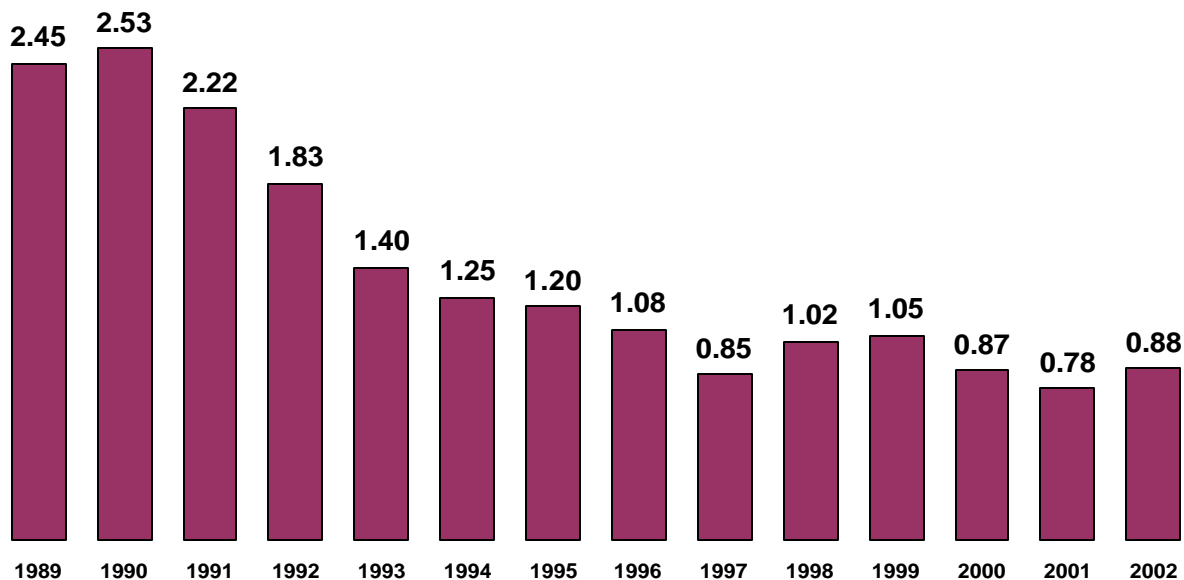
Medical-legal Examinations per Claim

The following chart illustrates the decline in the average number of medical-legal examinations per claim. The 64 percent decline reflects a series of reforms since 1989 and the impact of efforts against medical mills.

Reforms instituted in 1993 that advanced the role of the treating physician in the medical-legal process and granted the opinions of the treating physician a presumption of correctness were expected to reduce the average number of reports even more. Earlier CHSWC reports evaluating the treating physician did not find that these reforms had significant effect on the average number of reports per claim.

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Medical-Legal Exams per Workers' Compensation Claim (At 40 months from the beginning of the accident year)



Data Source: WCIRB

The change in the average number of reports between 1993 and 1994 was almost entirely the result of improvements that occurred during the course of 1993 calendar-year claims. These results were based on smaller surveys done by WCIRB when the claims were less mature. These later data, involving a larger sample of surveyed claims, suggest that the number of examinations per claim has continued to decline after leveling off between 1993 and 1995. The number of reports seems to have stabilized at just slightly more than an average of one report per PPD claim.

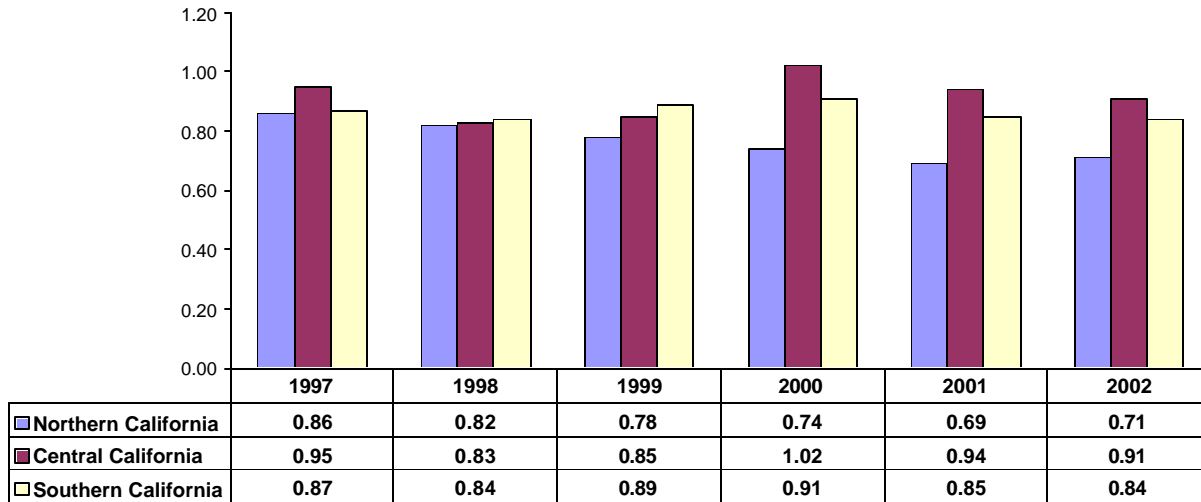
More recently, as the legal interpretation of the treating physician presumption has evolved, the impact of this provision on the frequency of medical-legal reports may be more important. Particularly since 1999, there has been a substantial drop in the frequency of medical-legal reports on permanent disability (PD) claims.

It is interesting to note that different regions of California are often thought to have different patterns of medical-legal reporting. Typically, southern California is thought to have more litigation with greater use of the medical-legal process. The revisions to the WCIRB Permanent Disability Survey, undertaken at the recommendation of CHSWC and instituted for the 1997 accident-year, explore new issues. A zip code field was added to analyze patterns in different regions.

The following chart demonstrates that the frequency with which medical-legal reports were used in 1997-1999 was not, in fact, different across the State's major regions. The average number of medical-legal reports per claim is statistically similar. However, as the number of reports has continued to decline between 1999 and 2002, the differences between regions have become more pronounced. It should be noted that to compare across all four available years, the period 1997-2002, which values claims at shorter maturity than the 40 months used in the above chart, is used. So the frequency is somewhat less.

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**Average Number of Medical-Legal Exams per Claim by Region
(at 34 months after beginning of accident year)**



Data Source: WCIRB

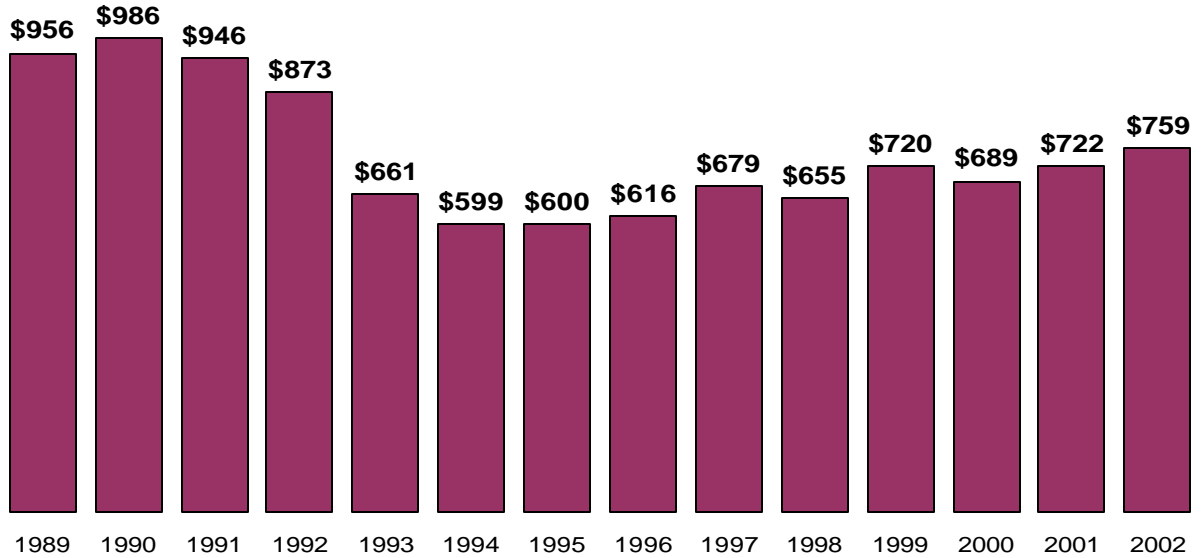
Cost per Medical-legal Examination

There are two reasons why the average cost per medical examination has declined by 23 percent since its peak in 1990. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which medical examinations are reimbursed. These restrictions were introduced in early 1993 and enforced after the start of August 1993.

Second, during this period, the average cost of medical examinations was also being affected by the frequency of psychiatric examinations. On average, psychiatric examinations are the most expensive examinations by specialty of provider. The relative portion of all examinations that is psychiatric examinations has declined since hitting a high in 1990-1991, leading to a substantial improvement in the overall average cost per examination.

SYSTEM PERFORMANCE

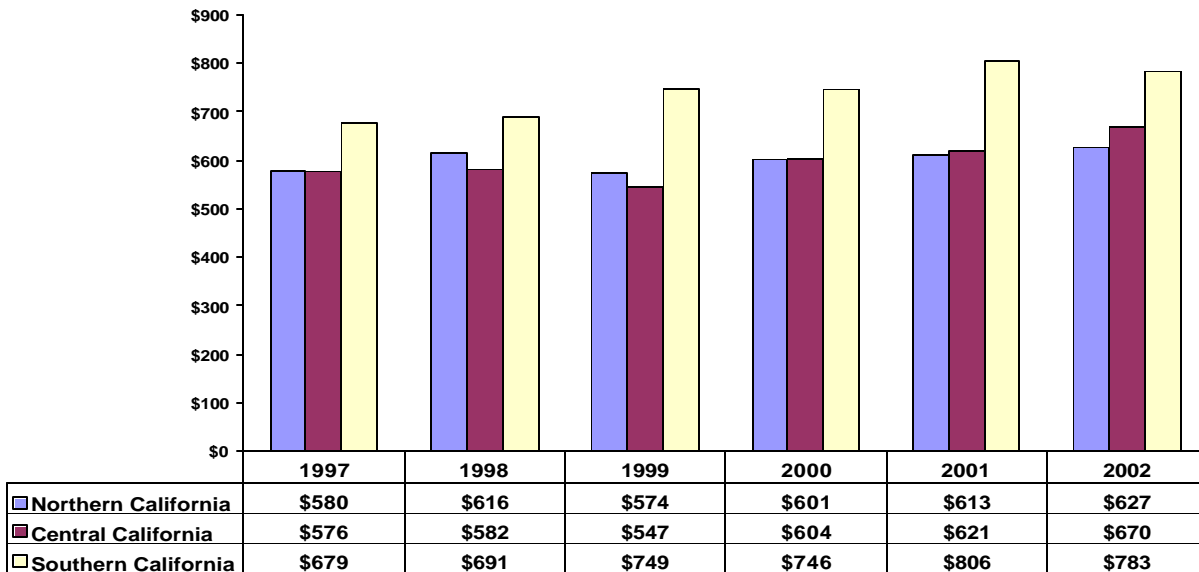
Average Cost of Medical-Legal Exam (Evaluated at 40 months of accident year)



Data Source: WCIRB

Since the mid-1990's, the average cost of a medical-legal report has increased by 20 percent, even though the reimbursement under the Official Medical Fee Schedule (OMFS) has remained unchanged since 1993. The revised PD Survey by the WCIRB includes additional questions that reveal some of the potential causes of this increase in costs. The changes indicate various types of Fee Schedule classifications as well as geography. However, issues for injury-years before 1997 cannot be examined.

Average Cost of Medical-Legal Exam by Region (at 34 months after beginning of accident year)



Data Source: WCIRB

SYSTEM PERFORMANCE

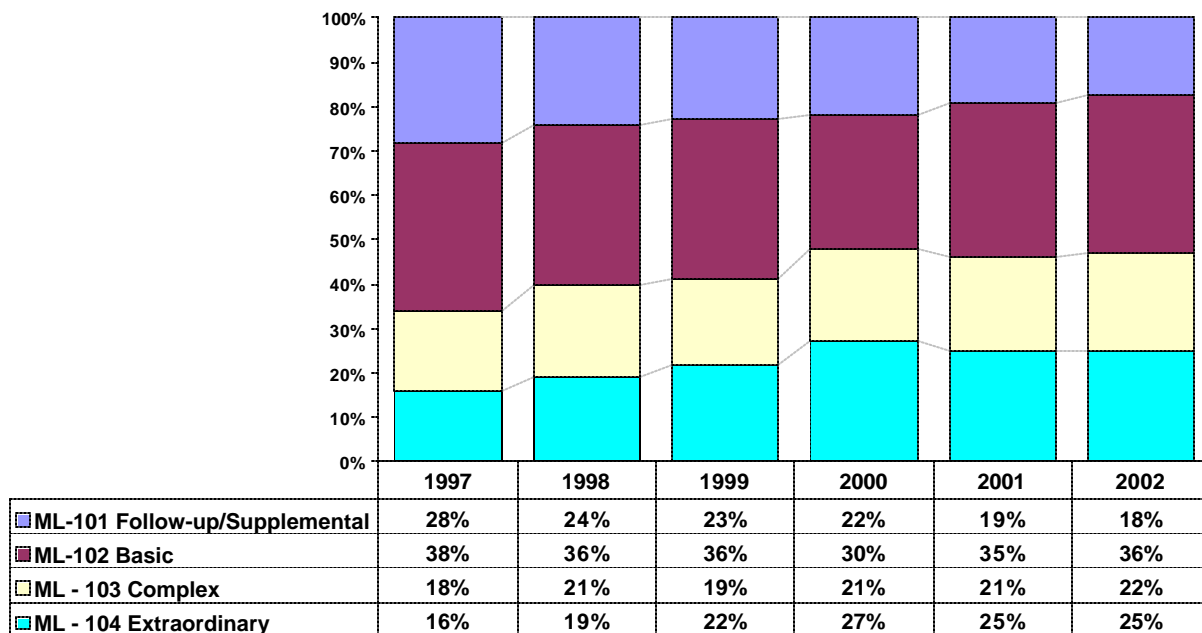
The survey data show that, on average, reports done in southern California have always been substantially more expensive. Increases in the average cost are being driven by claims in southern California.

Further analysis indicates that the cost driver for California and its southern region trends is not the price paid for specific types of examinations. Rather, the mix of codes under which the reports are billed has changed to include a higher percentage of the most complex and expensive examinations and fewer of the least expensive type. The following table shows the cost and description from the Medical-Legal Fee Schedule.

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up/ Supplemental	\$250
ML-102 Basic	\$500
ML-103 Complex	\$750
ML-104 Extraordinary	\$200/hour

The following two charts indicate that the distribution of examinations both in California and southern California has shifted away from ML-101 examinations to include a higher percentage of ML-104 examinations with “Extraordinary” complexity. At the same time, the average cost within each examination type did not exhibit a trend.

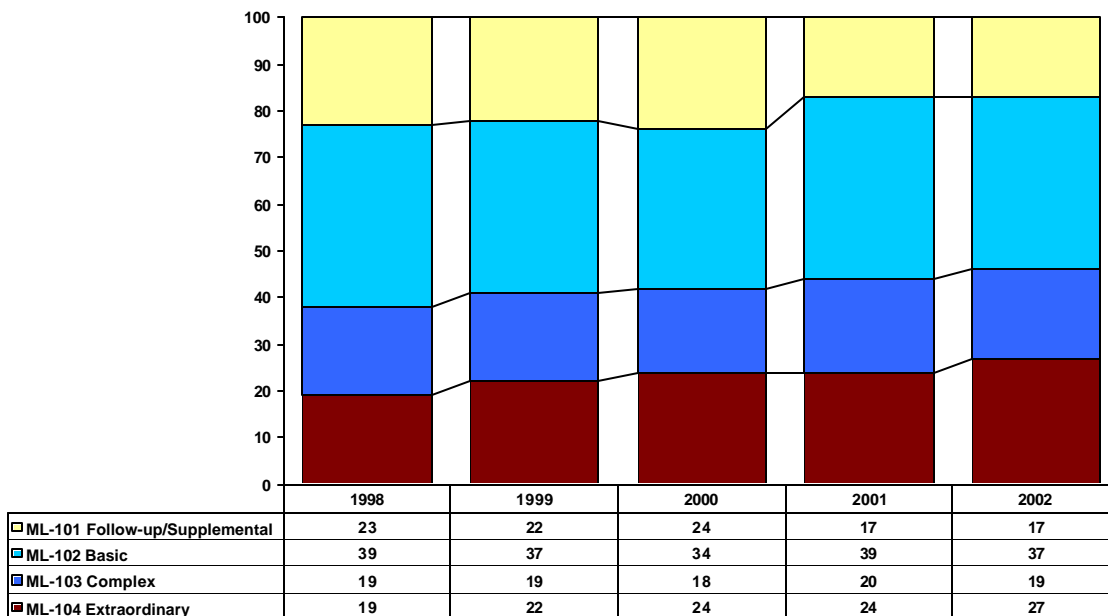
**Distribution of Medical-Legal Exam by Type
(Southern California)**



Data Source: WCIRB

SYSTEM PERFORMANCE

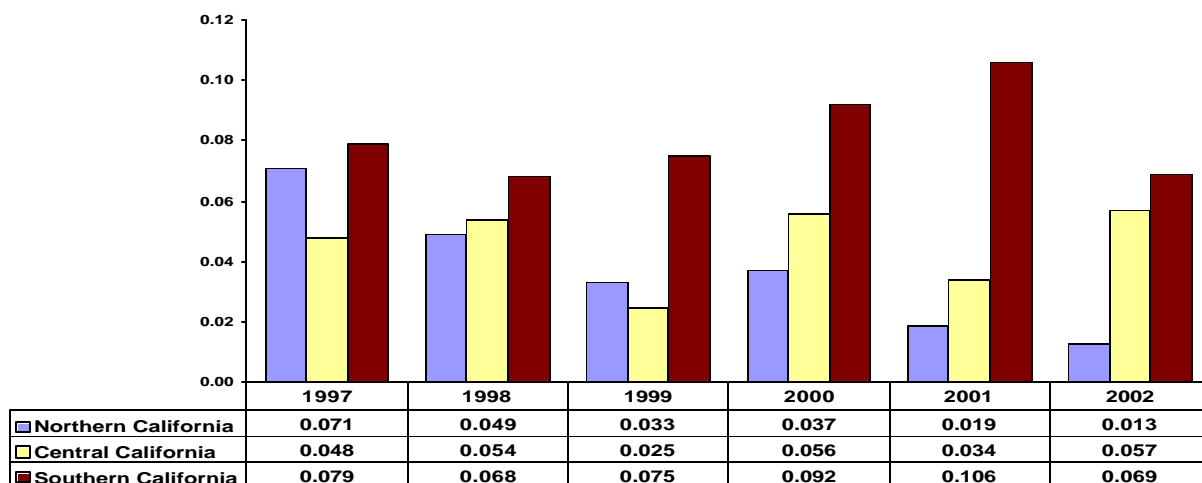
**Distribution of Medical-Legal Exam by Type
(California)**



Data Source: WCIRB

Another possible explanation for the differing trends in the average cost per report and the increasing frequency of the most complex examinations in southern California is that psychiatric evaluations are more common in southern California although there has been a decrease in frequency for this region of 35 percent between 2001 and 2002. Psychiatric examinations are nearly always billed under the ML-104 code that is the most expensive.

**Average Number of Psychiatric Exams
per PPD Claim by Region**



Data Source: WCIRB

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Medical-legal Cost Calculation

Total medical-legal costs are calculated by multiplying the number of PPD claims by the average number of medical-legal examinations per claim and by the average cost per medical-legal examination.

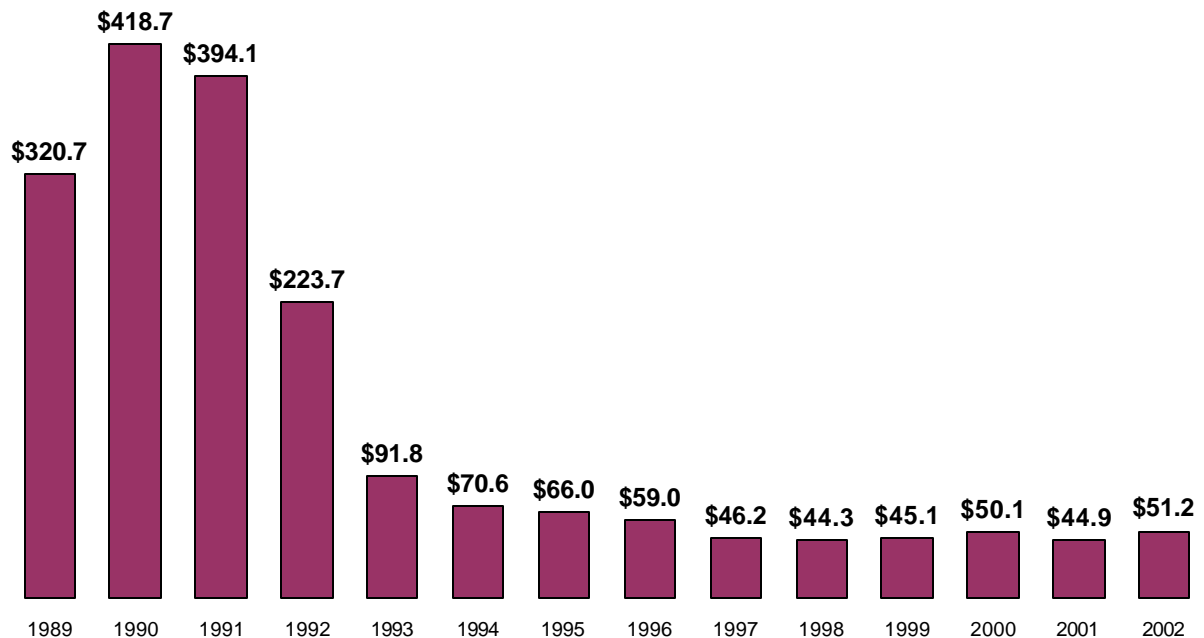
$$\text{Total Medical-Legal Cost} = \text{Number of PPD Claims} * \text{Average Number of Exams/Claim} * \text{Average Cost/Exam}$$

Medical-legal Costs

During the 1990's, the cost of medical-legal examinations improved dramatically. For the insured community, the total cost of medical-legal examinations performed on PPD claims by 40 months after the beginning of the accident-year has declined from a high of \$419 million in 1990 to an estimated \$51.2 million for injuries occurring in 2002. This is an 88 percent decline since the beginning of the decade.

Medical-Legal Costs on PPD Claims at Insured Employers

(In Million\$, 40 months after beginning of accident year)



Data Source: WCIRB

Sources of Improvement in Medical-legal Costs

The decline in total medical-legal costs for insurers reflects improvements in all components of the cost structure during the 1990's.

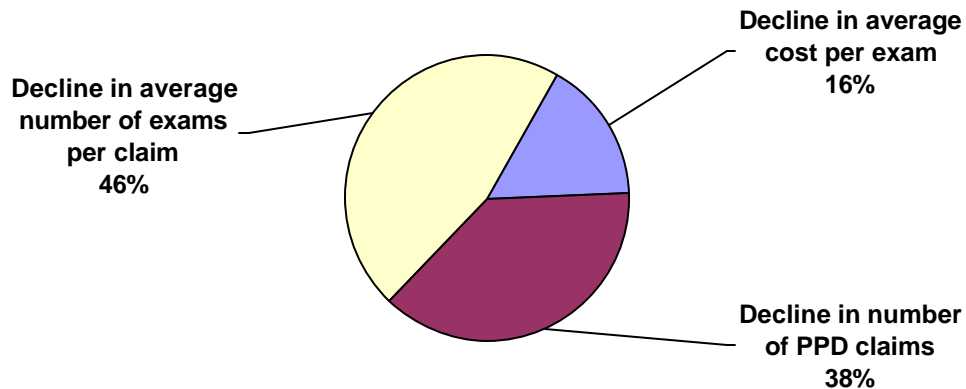
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As discussed in the previous sections, this substantial decline in total medical-legal costs for insurers results from significant decreases in all of the components of the cost structure.

The following chart shows how the cost savings break down by component since the beginning of the decade:

- About half (46 percent) of the cost savings is due to improvements in the medical-legal process that reduced the number of examinations performed per claim.
- Sixteen percent (16 percent) of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of examinations per claim.
- Thirty-eight percent (38 percent) of the improvement is a result of the overall decline in the frequency of reported PPD claims.

Sources of Savings Medical-Legal Costs on PPD Claims 1990-2002



Data Source: WCIRB

CHSWC PROJECTS AND STUDIES

INTRODUCTION

In response to its Labor Code mandate, the Commission on Health and Safety and Workers' Compensation (CHSWC) has engaged in many studies to examine health, safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of concern to the community.

CHSWC studies are conducted by independent researchers under contract with the State of California. Advisory Committees are composed of interested members of the workers' compensation community and the public who provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990's and to assess the impact on workers and employers.

While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies and to concerns and interests expressed by the Legislature and the workers' compensation community.

This report contains synopses of current and recently completed projects and studies followed by an overview of all CHSWC projects and studies. These are categorized as follows:

- Permanent Disability
- Return to Work
- Workers' Compensation Reforms
- Information Needs
- Occupational Health and Safety
- Workers' Compensation Administration
- Medical Care
- Community Concerns
- CHSWC Issue Papers



California Labor Code Section 77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may contract for studies it deems necessary to carry out its responsibilities."

SYNOPSIS OF CURRENT CHSWC PROJECTS AND STUDIES

PERMANENT DISABILITY

This section starts with a discussion of the comprehensive evaluation of permanent disability (PD) by the Commission on Health and Safety and Worker's Compensation (CHSWC) and continues with descriptions of CHSWC's other ongoing studies.

Background

The most extensive and potentially far-reaching effort undertaken by CHSWC is the ongoing study of workers' compensation PD in California. Incorporating public fact-finding hearings and discussions with studies by RAND and other independent research organizations, the CHSWC project deals with major policy issues regarding the way that California workers are compensated for PD incurred on the job.

CHSWC realizes that the rating of PD is one of the most difficult tasks of the workers' compensation system, often leading to disputes and litigation.

The manner in which California rates and compensates injured workers for total disability (TD) and partial permanent disability (PPD) has enormous impact on the adequacy of injured workers' benefits, their ability to return to gainful employment, the smooth operation of the Division of Workers' Compensation (DWC) adjudication system, and the cost of the workers' compensation system to employers.

The project consists of two phases. The focus of the first phase of the evaluation is on measuring the long-term earnings losses and other outcomes for workers with PD claims. The second phase is intended to refine these measures and, at the same time, provide policy makers with suggestions for reforms intended to improve outcomes for injured workers at reasonable cost to employers.

Permanent Disability – Phase 1


Initial Wage Loss Study


The initial report from the CHSWC study of PD, "Compensating Permanent Workplace Injuries: A Study of the California System," examines earnings losses and the replacement of earnings losses for workers with PPD claims at insured firms in California in 1991-92. The main findings of this report include:

- PPD claimants experienced large and sustained earnings losses over the five years following injury. These losses amounted to approximately 40 percent of the earnings these workers would have made if injury were avoided.
- Workers' compensation benefits replaced only 40 percent of pre-tax earnings losses and only 50 percent of after-tax earnings losses.
- Losses are largely driven by lower employment rates among PPD claimants over the years following injury.

- Earnings losses and disability ratings are not closely related, particularly for low-rated claims. Replacement rates and the fraction of losses that remain uncompensated after benefits are paid were lowest for the lowest-rated claims.

For further information...

 CHSWC Report: "Compensating Permanent Workplace Injuries: A Study of the California System" (RAND, 1998)

 CHSWC Report: "Findings and Recommendations on California's Permanent Partial Disability System-Executive Summary" (RAND, 1997)

 Check out: <http://www.rand.org/publications/MR/MR919/>

Policy Advisory Committee

A CHSWC Permanent Disability Policy Advisory Committee was established to review the RAND report and the community's responses and to recommend further action. The committee began meeting in November 1997 and continues to date.

Goals Established by the CHSWC Permanent Disability Policy Advisory Committee

- Decrease efficiently uncompensated wage loss for disabled workers in California.
- Increase the number of injured workers promptly returning to sustained work.
- Reduce transaction and friction costs, including costs to injured workers.

The CHSWC Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The workers' compensation community wanted additional information on how other factors, such as demographics and local economic conditions, affected the outcomes of the wage loss study. Observations were also made about the initial study parameters, as the study lacked data on employees of self-insured employers and data beyond the 1991-1993 period.

The PD Policy Advisory Committee urged the Commission to study those issues further. The Commission voted to continue the comprehensive evaluation of workers' compensation PD. Continuation of the evaluation of PD includes the following projects.

Enhancement of the Wage Loss Study to Include Self-insureds

Stakeholders objected to the first report, "Compensating Permanent Workplace Injuries: A Study of the California System," because they believed that self-insured employers, which account for one-third of claims in California, would have better outcomes for PPD claimants. Since self-insured employers are larger and higher-paying firms and since they directly bear the full cost of their workers' compensation claims, they should have more programs to encourage return to work (RTW) and a more motivated workforce.

Private Self-insureds

The report entitled “Permanent Disability at Private, Self-Insured Firms” was released in April 2001. This report includes an unprecedented data collection effort on PD claims at self-insured firms in California. The findings of this report are:

- Better RTW at self-insured firms led to a lower proportion of earnings lost by PPD claimants. During the five years after injury, self-insured claimants lost a total of 23 percent of both pre- and post-tax earnings, compared to the insured claimants’ proportional losses of about 32 percent.
- Since workers at self-insured firms have higher wages, they are more likely to have weekly wages that exceed the maximum temporary disability (TD) payment. Therefore, workers’ compensation benefits replaced a smaller fraction of losses at self-insured firms. Workers at these self-insured firms experienced lower five-year wage replacement rates (48 percent) than workers at insured firms (53 percent).
- At both insured and self-insured firms, replacement rates were very low for workers with the lowest indemnity claims. At the self-insured and insured firms, claimants with total indemnity falling below the 20th percentile had 14 percent and 11 percent of their lost earnings replaced by benefits, respectively.
- PPD claimants with high pre-injury earnings and high indemnity claims experienced large dollar losses that were not compensated by benefits.

Status

Completed.

For further information...



CHSWC Report: “Permanent Disability, Private Self-Insured Firms” (RAND, 2001)



Check out: <http://www.rand.org/publications/MR/MR1268/>

Public Self-insureds

Although not part of the original proposal, but as a result of methodological and data difficulties associated with measuring replacement rates at public self-insured employers, a second report on earnings losses in this sector is planned, and this study component is ongoing. The report will include findings about the following topics:

- Earnings losses and replacement rates for public school teachers.
- Earnings losses and replacement rates for police officers and firefighters.
- Earnings losses and replacement rates for other public employees.
- An examination of Labor Code Section 4850. Is full wage replacement during temporary disability (TD) a good policy for workers in occupations that involve risk-taking? Does this policy improve public safety? Is this the approach used in other states?

Status

The final report is expected in 2005.

Return to Work**Analysis of Wage Loss and Return to Work in Other States**

The study entitled “Earnings Losses and Compensation for Permanent Disability in California and Four Other States” is part of an ongoing evaluation of the workers' compensation permanent partial disability (PPD) system in California that the Commission on Health and Safety and Workers' Compensation (CHSWC) began in 1996. The study examines the losses experienced by workers with permanent disability (PD) and RTW rates in New Mexico, Washington, Wisconsin, Oregon and California, and compares the adequacy of compensation received from the states' workers' compensation systems.

Findings

- California's PPD system, when compared to the other states mentioned above, had the highest losses, highest average benefits paid, and lowest RTW rates.
- Despite increases in benefits under the recent workers' compensation legislation, Assembly Bill (AB) 749, the study projects that California's replacement rate is lower than three of the four comparison states studied.
- In looking at the replacement rates, after AB 749, California regained ground lost to inflation (benefits were not indexed to the State average weekly wage in California as in other states) but did not gain relative to other states.
- The researchers concluded that California is heading in the right direction through its AB 749 mandate which directs the Administrative Director (AD) to implement a RTW program focused on subsidies to employers for modified work or ergonomic changes.
- The researchers recommended that California could consider moving to a two-tier benefit system, which pays higher benefits for people who have not been offered jobs at all or suitable jobs with the pre-injury employer.
- The researchers noted that no states in the study had “adequate” benefits to replace two-thirds of lost wages.

**Return To Work in Other States
Project Team**

Christine Baker
CHSWC

Jeff Biddle
RAND

Leslie I. Boden, PhD
Boston University – Public Health

Chris Mardesich
RAND

Robert T. Reville, PhD
RAND

Status

The final report is expected to be issued in 2005.

Return to Work

Best Practices Encouraging Return to Work

Background

Many firms in California have adopted practices to improve return to RTW of injured employees. Policy makers may wish to encourage increased emphasis on RTW as a means to reduce uncompensated wage loss.

Return-to-Work Best Practices Project Team

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Description

This project collected data on the RTW practices of California firms and examined their effectiveness. Since there is significant overlap between this study and the CHSWC Vocational Rehabilitation Study, RAND requested that the two studies be combined.

The report will cover the following topics:

- Valuing RTW. How much better are replacement rates for workers who return to the at-injury employer? How often do workers who return to the at-injury employer continue to work at that employer? How severe are wage losses for workers who return to work at other employers?
- Description of RTW practices of self-insured employers: what works?
- RTW policies and regulations in other states.
- Vocational rehabilitation in California. Does it improve outcomes? Is it worth the cost?

Objectives

The objectives of this project are to:

- Provide information on the most effective RTW practices of California employers. This information is intended to assist employers and employees to determine which RTW practices may be applicable to their needs.
- Measure the impact of the reform changes on the vocational rehabilitation program and make available comparative data in future years regarding the number of workers undergoing vocational rehabilitation, the duration and costs of rehabilitation programs and services, and the results produced by those programs and services.

Findings

Preliminary findings indicate that the cost of the vocational rehabilitation benefit declined by \$274 million (49 percent) between 1993 and 1994.

The decline in average cost per vocational rehabilitation claim appears to be equally dramatic, dropping 40 percent from about \$14,200 in 1993 to \$8,600 in 1994. This downward trend appears to be continuing with 1995 costs declining an additional 10 percent.

Recent results indicate that the reform efforts apparently achieved one major goal, to encourage more employers to offer modified or alternative work and to pay these workers at or near their pre-injury wage. Offers of modified or alternative work increased by 50 percent to include nearly one-third of qualified injured workers. At the same time, nearly 80 percent of these workers received wages that were at least 85 percent of the pre-injury level, and nearly 60 percent received wages equal to or greater than the pre-injury level.

The costs of the rehabilitation benefit declined dramatically as a result of reform. At the same time, outcomes for qualified injured workers, as measured by work status and several income measures, are virtually identical despite this decrease in overall benefit costs.

The study also found that most firms have formal RTW programs. Such programs emphasize early contact of employees which may reduce disability and communication of policies to the treating physicians; however, the most frequent transitional strategy for returning the injured worker back to the workplace is modification of work tasks. Another preliminary finding is that worker participation in a formal RTW program decreases a worker's wage loss on average by \$1,500 in the year after injury.

Status

The draft report is expected in 2006.

Apportionment

CHSWC Study of Apportionment

As requested by Senator Charles Poochigian and Richard Keene, CHSWC is conducting an overall study of the effect of the changes in the law of apportionment

In October 2005, CHSWC issued a report "Understanding the Effect of Senate Bill (SB) 899 on the Law of Apportionment". In this report, CHSWC provides legal analysis on the effect of SB 899 on the prior law of apportionment, how apportionment may be affected under the AMA Guides to Evaluation of Permanent Impairment, and what the key issues are that remain to be resolved.

In addition to the legal analysis, CHSWC will also be measuring how the law is being applied at the trial level to determine whether the changes enacted by SB 899 are having the intended effects, as well as to identify areas that may warrant further investigation.

The statistical analysis will help to quantify the economic effects of the changes in the law. This will enable policy makers to determine if the statutory language is achieving the policy goals. This will also enable insurance rate-makers to better predict the eventual losses and thus set appropriate rates for insurance coverage.

The statistical study will eventually monitor the performance of the Workers' Compensation system with respect to apportionment decisions on a continuing or as-needed basis. The DWC online system for tracking cases does not capture sufficient information about the issues in each case to permit performance monitoring on particular issues such as apportionment. The study must therefore rely on sample information to be collected directly from case files maintained in the WCAB district offices around the state. A pilot phase has been completed to confirm the feasibility of the data collection method, and the actual data collection on a state-wide basis is expected to commence by the end of 2005.

The collection of apportionment data from DEU ratings has begun as part of the analysis of all ratings being performed under the Permanent Disability Rating Schedule that took effect January 1, 2005.

For further information...



CHSWC Report: "Understanding the Effect of Senate Bill (SB) 899 on the Law of Apportionment" (2005) may be accessed at: <http://www.dir.ca.gov/CHSWC/FinalApportionmentPaper.pdf>

Workers' Compensation Reforms

Medical-legal Study

Background

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

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In 1995, the Commission on Health and Safety and Workers' Compensation (CHSWC) initiated a project to determine the impact of the workers' compensation reform legislation on workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center (SRC) at UC Berkeley to carry out this study.

Description

The study analysis is based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. WCIRB data summarize accident claim activity, including such measures as degree of impairment, the type and cost of specialty examinations, whether the case was settled and,

if so, the method of settlement employed.

Findings

The study determined that a substantial decline in total medical-legal costs occurred during the 1990's. This decline can be attributed to several factors:

- About half (46 percent) of the cost savings is due to improvements in the medical-legal process that reduced the number of examinations performed per claim.
- Sixteen percent of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of examinations per claim.
- Thirty-eight percent of the improvement is a result of the overall decline in the frequency of reported PPD claims.

Status

The medical-legal study was initiated in 1995 and is ongoing.

Workers' Compensation Reforms

Court Technology Project

Background

The Commission on Health and Safety and Workers' Compensation (CHSWC) RAND Judicial Study, CHSWC staff, and the Division of Workers' Compensation (DWC) staff has identified several problems with the current court system of DWC. These problems include a paper-driven system, which overburdens clerical staff, a lack of integration of antiquated computer systems with high file-storage costs, and difficulty in accessing information.

EAMS Project

A Feasibility Study Report (FSR) for the Electronic Adjudication Management System (EAMS) was approved by the Department of Finance and a project team was assembled to create a Request For Proposal (RFP) beginning in January 2005.

EAMS will eventually replace the current Workers' Compensation Appeals Board (WCAB) On-line, Vocational Rehabilitation, Disability Evaluations Unit (DEU) and Uninsured Employers' Fund (UEF) Claims Management systems with a Commercial Off-the-Shelf (COTS) case management, calendaring, document management, and cashiering solution. Also critical to the proposed system is the development of an enterprise relational database system that will combine data elements of the three primary systems, as well as add other data elements that will benefit DWC and other divisions within the Department of Industrial Relations (DIR).

In addition, the system will integrate with other existing systems, such as the Workers' Compensation Information System (WCIS) and AristoCAT court reporting software, in addition to supplementing DWC's call center to drastically improve DWC's overall business intelligence and customer services capabilities. The solution will provide the best value to DWC/WCAB and the State by providing a cost-effective way of meeting the business and technical requirements specified in the FSR.

Electronic Adjudication Management System

Key components of the proposed system include:

- COTS case management, calendaring, and cashiering system.
- COTS document management system.
- Upgrade of existing equipment to support new functionality.

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CHSWC PROJECTS AND STUDIES

- Migration of the DEU system to a modern platform.
- Division-wide relational database system with integration to WCIS.
- Integration of AristoCAT court reporting technologies into core business system.
- COTS reporting software tool.
- Claims management software.

Integrating robust COTS solutions with existing technology investments will provide the following benefits:

- Meet the technical and functional requirements, as well as the project objectives of DWC.
- Provide a cost-effective and industry-standard approach to managing and improving paper-based processes.
- Provide vendor support and ongoing maintenance terms and conditions mitigating technological risk.
- Leverage current technology investments and feed information to WCIS in support of DWC business intelligence goals.
- Enable call center staff to be more effective and to field more calls that will not have to be routed to district offices.
- Improve customer service capability and the ability to exchange data with external stakeholders.
- Improve overall business intelligence and operational performance-reporting capabilities.

Status

The RFP was issued in the summer of 2005.

Information Needs

Consolidating and Coordinating Information for Injured Workers

Background

To address substantial gaps in basic information for injured workers in the workers' compensation system, the Commission on Health and Safety and Workers' Compensation (CHSWC) voted to undertake a new project, "Consolidation and Coordinating Information for Injured Workers," which involved the design and production, in both English and Spanish, of a prototype guidebook for injured workers based on the Fact Sheets that were completed in 2000 for CHSWC. The project also involved facilitation of discussions between stakeholders in the workers' compensation community regarding specific methods and activities to improve the usefulness and understandability of the benefit notices that claims administrators send to injured workers about their individual claims.

Description

In collaboration with the Department of Industrial Relations (DIR), the Division of Workers' Compensation (DWC), CHSWC staff, and members of the workers' compensation community, the Labor Occupational Health Program (LOHP) at the University of California Berkeley produced "Workers' Compensation in California: A Guidebook for Injured Workers" in 2002. CHSWC staff and staff of the Institute of Industrial Relations at the University of California Berkeley have sought comments and recommendations from claims administrators, applicants' attorneys, and representatives of labor and legal services organizations on how benefit notices might be simplified and improved.

Revised Guidebook for Injured Workers

An update of the Guidebook for Injured Workers, entitled "2005 Workers' Compensation in California. A Guidebook for Injured Workers," has been published in English and Spanish. The revisions incorporate changes of recent workers' compensation reform legislation. This revised guidebook provides accurate, realistic, and practical information, including different interpretations of legislation and proposed regulations. It incorporates changes in the law through January 2005 and includes additional information to reflect the changes in Supplemental Job Displacement Benefit (SJDB) regulations of February 2005. Addenda will be posted online to keep this publication current.

Additional changes to the guidebook include information on predesignation, medical treatment, dispute resolution, return to work, permanent disability ratings, especially the 15 percent bump

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CHSWC PROJECTS AND STUDIES

up, bump down, and the SJDB. Additional materials available include the previously produced fact sheets and a video.

The guidebook, as well as other CHSWC materials, has been used extensively at Information and Assistance Offices and by District Offices. Materials are also available on the DWC website.

Status

The Commission approved the revised guidebook in February 2005, and it was posted on the CHSWC website.

For further information...



A Guidebook for Injured Workers (2005)



Check out: <http://www.dir.ca.gov/chswc/Guidebook-2005.pdf>



Check out: <http://www.dir.ca.gov/CHSWC/Guidebook-2005-Spanish.pdf>

MEDICAL CARE

Medical Treatment Study

Background

The strengths and weaknesses of the medical care system for California's injured workers have been documented in studies addressing key dimensions of care: access, cost, utilization, quality, and stakeholder satisfaction. However, the studies were completed prior to the recent enactment of statutory provisions intended to slow the rate of growth in workers' compensation expenditures, and most of the studies have focused on particular aspects of medical treatment. With the significant changes that are being made in the California workers' compensation program, a broad-based study is needed that documents the major issues in medical care, discusses the likely implications of the new statutory provisions on incentives to provide high-quality care in an efficient manner, and analyzes the major policy issues that either have not been addressed or are likely to arise as the new legislation is implemented. The issues are complex, and addressing them requires an assessment of what can be learned from other workers' compensation programs, non-occupational health insurance programs, and managed care organizations about strategies to improve the efficiency and quality of medical care and how they might be applied to the California workers' compensation program.

Description

Labor Code Section 127.6 of Assembly Bill (AB) 749 requires "the Administrative Director (AD) in consultation with the Commission on Health and Safety and Workers Compensation, the Industrial Medical Council, other state agencies, and researchers and research institutions with expertise in health care delivery and occupational health care service, conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses."

In order to meet the above requirements of AB 749, the Commission on Health and Safety and Workers' Compensation (CHSWC) and the Division of Workers' Compensation (DWC) issued a request for proposal (RFP) for a study on medical treatment in December 2003.

The study focuses on strategies to improve the quality and efficiency of medical services furnished to California injured

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workers. The RAND study clustered its analysis of cost containment and quality issues into five major tasks:

- Identify the most important utilization and cost drivers and quality-related issues affecting medical care provided to California injured workers.
- Analyze best practices in quality-assurance, quality-improvement and cost-containment strategies for applicability in California workers' compensation.
- Evaluate medical treatment guidelines:
A report evaluating medical treatment guidelines was issued in November 15, 2004.
- Analyze fee schedule issues:
As part of the CHSWC/DWC study, RAND has provided technical assistance to DWC on implementing and updating the Medicare-based fee schedules and physician fee schedule. It has also been examining special topics of burn cases and repackaged drugs in depth. Two CHSWC studies by RAND have been issued on these topics: Paying for Repackaged Drugs under the California Workers' Compensation Official Medical Fee Schedule, and Payments for Burn Patients under California's Official Medical Fee Schedule for Injured Workers.
- Establish a conceptual framework for monitoring medical care. The monitoring system will:
 - Provide information on state-level performance.
 - Allow the State to identify potential problems, ask questions and monitor the effect of policy interventions.

Status

The study is in process. The final report is expected in early 2006.

For further information...

-  CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (2004)
-  Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, 2004)
-  Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California Executive Summary (RAND, 2004)
-  Paying for Repackaged Drugs under the California Workers' Compensation Official Medical Fee Schedule (RAND, 2005)
-  Payments for Burn Patients under the California Official Medical Fee Schedule for Injured Workers (RAND, 2005)
-  http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.doc for CHSWC Recommendations.
-  http://www.dir.ca.gov/CHSWC/WR-203_111504cd_FINAL.pdf for full report
-  http://www.dir.ca.gov/CHSWC/WR-203_ExSum_111504cd_FINAL.pdf for executive summary.
-  http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf
-  <http://www.dir.ca.gov/CHSWC/WR-263.Burn050525.pdf>

CHSWC/DWC Study on Medical Treatment Protocols

Background

The cost of providing medical care to California workers with job injuries and illnesses has been steadily increasing in the past five years, skyrocketing in 2001 and 2002. From 1995 to 2002, workers' compensation medical costs have more than doubled. The rise in medical care expenditures is placing considerable strain on the entire workers' compensation system and prompting policy makers to consider proposals for improving the delivery of workers' compensation medical care in the state.

The high costs for workers' compensation medical care may be due to the fact that the numbers of medical visits in California are much higher than in many other states.

Description

Senate Bill (SB) 228 mandates that the Commission on Health and Safety and Workers' Compensation (CHSWC), on or before July 1, 2004, conduct a survey and evaluation of nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level and in other medical benefit systems.

In addition, SB 228 requires that Administrative Director (AD) of the Division of Workers' Compensation (DWC), in consultation with CHSWC, adopt a medical treatment utilization schedule by December 1, 2004.

In order to meet the above requirements of SB 228, CHSWC and the DWC had issued a request for proposal (RFP) for a study on medical treatment protocols in December 2003.

The RFP specified that the Medical Treatment Study, among other issues, will provide an evaluation of utilization review (UR) guidelines that might be considered for the California workers' compensation program.

RAND conducted a survey of existing guidelines and provided comparative analysis of guidelines using a variety of measures. The CHSWC/DWC study by RAND followed the steps below in providing an analysis of medical treatment utilization guidelines appropriate for the California workers' compensation system:

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CHSWC PROJECTS AND STUDIES

- Screen guidelines for consistency with the legislative criteria and features preferred by the Department of Industrial Relations (DIR); guidelines that pass will go on for additional evaluation.
- Use an established guideline appraisal instrument to evaluate the quality of guideline development.
- Assess whether guidelines contain the content required by the legislation, specifically that they “address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers’ compensation cases.”
- Convene a multidisciplinary expert panel to assess the clinical validity of the guidelines overall and with regard to the content required by the legislation.
- Convene a stakeholder panel for discussion of the guidelines.

Recommendations

The CHSWC study by RAND offered short-, intermediate- and long-term recommendations. The main recommendation is that the AD should adopt the American College of Occupational and Environmental Medicine (ACOEM) Guidelines supplemented by the American Association of Orthopedic Surgeons (AAOS) Guidelines for lumbar spinal fusion surgeries. The study also recommended that the state develop a consistent set of utilization criteria to be used by all payors.


In response to the foregoing, CHSWC recommends the following course of action:


- Present RAND report to the AD of the DWC for the AD’s consideration.
- Recommend consideration of RAND findings in the adoption of medical treatment utilization schedule.
- Recommend establishing an ad hoc advisory group.
- Recommend further studies to be conducted jointly by DWC and CHSWC.


Status

A report on the evaluation of guidelines for use in UR was presented in November 2004.

For further information...

 CHSWC Recommendations to DWC on Workers’ Compensation Medical Treatment Guidelines (2004)

 Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, 2004)

 Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California Executive Summary (RAND, 2004)

 http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.doc for CHSWC Recommendations

 http://www.dir.ca.gov/CHSWC/WR-203_111504cd_FINAL.pdf for full report

 http://www.dir.ca.gov/CHSWC/WR-203_ExSum_111504cd_FINAL.pdf for executive summary

Paying for Repackaged Drugs

Background

Assembly Bill (AB) 749 and Senate Bill (SB) 228 made several changes affecting workers' compensation pharmaceutical costs that were intended to control the cost of pharmaceuticals. Some of these changes specified that:

- Pharmacies and other providers that dispense medicine and medical supplies will dispense a generic drug equivalent, unless the prescribing doctor states otherwise in writing or a generic equivalent is unavailable.
- The Administrative Director (AD) will also adopt an official pharmaceutical fee schedule establishing maximum fees for medicines and medical supplies provided to injured workers. The schedule will be based on the Medi-Cal payment system.

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Pursuant to SB 228, the current pharmaceutical fee schedule became effective January 1, 2004, and is based on 100 percent of Medi-Cal reimbursement rates. This schedule will be in effect until the AD adopts an official pharmaceutical fee schedule.

However, the Medi-Cal fee database does not include repackaged drugs; therefore, these drugs are still reimbursed at the rates of the pre-SB 228 Official Medical Fee Schedule (OMFS) that was not tied to Medi-Cal reimbursement rates.

Description

Labor Code Section 127.6 of AB 749 requires "the Administrative Director (AD) in consultation with the Commission on Health and Safety and Workers Compensation, the Industrial Medical Council, other state agencies, and researchers and research institutions with expertise in health care delivery and occupational health care service, conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses."

In order to meet the above requirements of AB 749, the Commission on Health and Safety and Workers' Compensation (CHSWC) and the Division of Workers' Compensation (DWC) issued a request for proposal (RFP) for a study on medical treatment in December 2003. One part of the study focuses on analyzing appropriate maximum allowable fees for repackaged drugs.

Findings

According to the RAND study prepared for CHSWC and DWC:

CHSWC PROJECTS AND STUDIES

- The payments for repackaged drugs dispensed by physicians based on the pre-existing OMFS schedule are higher than the pharmacy-dispensed drugs which are reimbursed according to the Medi-Cal formula.
- The OMFS fee schedule formula that applies to repackaged drugs was designed to encourage dispensing of generic drugs and reflected the assumption that the Average Wholesale Price (AWP) for generic drugs was significantly lower than the brand name equivalent. However, the AWP prices reported by the repackagers do not appear to be related to their own acquisition costs, and the differential between the brand name and generic AWP for repackaged drugs is less than expected.
- The dispensing fee of the repackagers is unnecessary and could create inappropriate financial incentives for prescribing patterns. The dispensing fee is intended for pharmacist consultation, and the physician is generally reimbursed for evaluation and management services.

Recommendations

The Repackaging Drug study prepared by RAND for CHSWC and DWC recommends that the following options be considered in establishing a fee schedule amount for repackaged drugs:

- Use the Medi-Cal fee schedule payment amounts for pharmacy-dispensed drugs to reimburse repackaged drugs dispensed by physicians.
- Use the Medi-Cal fee schedule payment amounts for pharmacy-dispensed drugs minus the dispensing fee.
- Establish a premium for physician-dispensed drugs in place of the dispensing fee.

Status

A final report was approved by CHSWC at the April 2005 meeting.

For further information ...



Paying for Repackaged Drugs under the California Workers' Compensation Official Medical Fee Schedule (RAND, 2005)



http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf

Pharmacy Repackaging Study

Background

Pharmaceutical costs are one of the fastest-rising medical costs. According to the Workers' Compensation Rating Bureau (WCIRB), medical payments to pharmacists increased from 5.1 percent to 10.4 percent of total paid medical costs between 1995 and 2004. The use of "repackaged drugs" by workers' compensation medical providers has been raised as an issue leading to high and increasing prescription drug costs.

Repackaged drugs are drugs that have been purchased in bulk and repackaged into individual prescription sizes for dispensing in physicians' offices. Reimbursement for most pharmaceuticals is tied to the Medi-Cal Pharmacy Fee Schedule. However, since repackaged drugs are not found in the MediCal Pharmacy database, they may be reimbursed at a higher rate.

Description

On April 28, 2005, CHSWC voted to engage in a study of the impact of repackaged drugs on workers' compensation costs.

Issues related to repackaged drugs were highlighted in a report to the Commission by Barbara Wynn of the RAND Corporation. This study will build on the CHSWC report by RAND to provide an analysis on the following:

- Do repackaged drugs lead to higher prescription costs for the same or similar drugs than dispensing by pharmacies?
- If so, how much higher are costs, both average prescription costs and the total cost to the system?
- Are there alternative fee schedule policies, such as applying Medicare Maximum Allowable Ingredient Cost (MAIC) and Federal Allowable Cost (FAC) pricing rules that could appropriately price these repackaged drugs if regulatory or statutory changes were introduced?
- Do the profit incentives connected to repackaged drugs cause physicians to change their prescribing practices?
- If so, are the changes for the type of drug, the amount prescribed, and/or the frequency of prescriptions? In addition, what effect do any changes in provider practice have on workers' compensation pharmaceutical costs?

The CHSWC study will be conducted jointly by UC Berkeley and RAND using data from the California Workers' Compensation Institute (CWCI).

Status

In process. Final report expected by December 2005.

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Payments for Burn Cases under Workers' Compensation Medical Fee Schedule

Background

Until January 1, 2004, burn cases were exempt from the Official Medical Fee Schedule (OMFS) hospital inpatient fee schedule. Senate Bill (SB) 228 ended the exemption of burn diagnostic-related groups (DRGs) from the OMFS and placed reimbursement of burn cases under the Inpatient Hospital Fee Schedule, which is linked to Medicare. The fees for burn cases, currently paid at 1.2 times the Medicare fee schedule, raised concern with some members of the workers' compensation community. In response to these concerns, the Commission on Health and Safety and Workers' Compensation (CHSWC) study by RAND examined the adequacy of the Official Medical Fee Schedule (OMFS) payment structure for burn DRGs.

Payments for Burn Cases under Workers' Compensation Medical Fee Schedule

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Description

The CHSWC study by RAND evaluated potential losses which may be incurred by hospitals for workers' compensation cases and discussed alternatives to simply exempting the burn DRGs from the current Inpatient Hospital Fee Schedule, which is linked to Medicare.

The study focused on analyzing the following questions:

- How do the costs of workers' compensation patients compare to costs for Medicare patients?
- What is the relationship between the OMFS payments and the estimated costs of providing care to injured workers?

Findings

The findings of the study include the following:

- Workers' compensation burn cases are less costly on average than Medicare patients in six of the eight DRGs.
- Overall payments to cost ratios are adequate for burn DRGs under the current fee schedule.
- There is no support for an across-the-board exemption for burn DRGs.


Recommendations

CHSWC recommends that there be no exemption for burn DRGs.

Status

CHSWC approved the release of the study in April 2005.

For further information ...

 Payments for Burn Patients under the California Official Medical Fee Schedule for Injured Workers (RAND, 2005)

 <http://www.dir.ca.gov/CHSWC/WR-263.Burn050525.pdf>

CHSWC Study on Spinal Surgery Second-Opinion Process

Background

Labor Code Section 4062 provides a procedure for a second opinion if the employer objects to the doctor's recommendation for spinal surgery in the workers' compensation system. The employer has ten days from the receipt of the report to object to the report of the treating physician recommending that spinal surgery be performed.

Description

An uncodified provision of Senate Bill (SB) 228 (Alarcón) requires that CHSWC conduct a study on the spinal surgery second-opinion process (SSSOP) and issue a report concerning the findings of the study and recommendations for further legislation.

At its August 19, 2004, the CHSWC voted to approve plans for a study to evaluate the SSSOP in the workers' compensation system. The study has reviewed the requests that are coming in on the SSSOP and has looked at the rate of cases meeting the statutory time frames, the reasons for denials, the operational impact of the process, and the access to care issues.

The project team obtained data on the request for second-opinion spinal surgeries from the DWC Medical Unit. Data from the California Workers' Compensation Institute (CWCI) was used to analyze if the list of second-opinion surgery evaluators met the geographic requirements established in the DWC's regulation on the SSSOP.

Preliminary Findings

- Spinal surgery appears to be more heavily utilized in the California workers' compensation system than in workers' compensation systems nation-wide. California's injured workers with back conditions were 60-110 percent more likely to undergo spinal surgery than in other workers' compensation systems or group health nationally.
- Between 9 percent and 12 percent of spinal surgeries were being challenged by employers and insurers (850-1,150 of an average 9,500 surgeries done annually).
- A minimum estimate of the percent of workers that fail to complete the SSSOP process and therefore do not receive surgery is 29 percent.
- One major hurdle for these workers is the distance they can be required to travel to the SSSOP evaluator. Especially in rural areas, this distance will frequently exceed significantly the 30-mile radius suggested by regulation.
- About half (48.5 percent) of spinal surgery second opinions rejected the need for surgery.

Status

In process. Final report due June 2006.

Spinal Surgery Second-Opinion Study Project Team

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American Medical Association Guides Training Conference

Background

It has been brought to the attention of CHSWC that there is a critical need to provide training to the medical community and the judges in the workers' compensation community on the American Medical Association (AMA) Guides.

Labor Code 4600, amended by Senate Bill (SB) 899, requires that the Administrative Director (AD) adopt a revised permanent disability (PD) schedule by January 2005 and that the injury descriptions be based on the AMA Guides.

Currently, there is very little standardized training in the workers' compensation community on these Guides. To address this need, CHSWC, the Division of Workers' Compensation (DWC), the California Medical Association (CMA) and the AMA held training sessions in both northern and southern California in November 2004.

Description

The initial two-day training session was held on November 4-5, 2004, in southern California and November 8-9, 2004, in northern California. Over 500 attendees in each region participated in each session. Participants included members of the workers' compensation medical community and workers' compensation judges. Due to the success of and need for the training, a new training schedule has been developed.

Status

Ongoing AMA and CHSWC joint training will be conducted throughout the year.

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Forum on Terrorism and Disaster Preparedness

Background

In the June 2004 meeting, CHSWC voted to approve an educational forum on the relationship between terrorism risk, insurance, national security and public policy.

Description

A one-day forum, "National Symposium on the Future of Terrorism Risk Insurance," was held in June 20, 2005, in southern California at the University of Southern California (USC).

Topics for the forum included:

- The terrorism threat: insuring for the future.
- The economics of terrorism insurance.
- Trends in terrorism and the architecture of TRIA.
- Can insurance cover weapons of mass destruction?
- Industry response: how we will prepare for the threat.
- Insurance and the catastrophic loss of human life: workers' compensation, life insurance, and victim compensation.
- Perspectives.
- The future of terrorism insurance.

Status

A one-day forum, "National Symposium on the Future of Terrorism Risk Insurance," was held June 20, 2005, at the University of Southern California (USC).

Issue Paper to be finalized by early 2006.

Terrorism and Disaster Preparedness Planning Committee

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State Disability Insurance Integration Project

Background

State Disability Insurance (SDI) makes support payments to people in the labor force who have disabilities resulting from non-work causes that preclude working. Workers' compensation makes support payments to workers who are off work as a result of occupational-related disabilities. Some have observed that there is substantial overlap between these two systems that results in a significant amount of litigation. Also, the systems try to accomplish the same objectives, but the objectives are complicated by the need to parse the cause of disability between occupational and non-occupational origins.

The integration of the two systems into a single seamless system could reduce the costs to both workers and employers while improving outcomes.

Description

In November 2003, Senator Alarcón requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) study the integration of SDI and workers' compensation temporary disability (TD) insurance.

SDI Integration Project Team

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The recently passed workers' compensation reform legislation, Senate Bill (SB) 899, for the first time encourages employers to combine occupational and non-occupational medical treatment and indemnity payments. For a number of reasons, this is expected to result in substantial savings to employers, especially in occupational medical costs.

The first part of the study will focus on the integration of SDI and workers' compensation TD payments. The study will focus on the following areas:

- The potential benefits derived from integration of two benefit-delivery systems.
- Potential costs and other problems faced by employees, employers and state government.
- Where such an integrated benefit-delivery program might best be housed within state government and/or the private sector.
- A review of the experience of employers and jurisdictions with integrated benefit-delivery systems.

The second part of the study will focus on the integration of non-occupational and occupational medical treatment and will answer the following questions:

- What percentage of health care delivered to the working population is for treatment of occupational injuries?
- Is there a strong correlation between workers who are uncovered for health insurance and the workers' compensation costs faced by their employers?
- How does the combined cost of occupational and non-occupational medical costs differ by industry and occupation?

CHSWC PROJECTS AND STUDIES

The final report would include these areas, as well as estimates of the range of potential subsidies that could accrue to employers if seamless 24-hour medical treatment were adopted. The potential subsidies would be examined by employer size, industry, and current employer-based health-coverage characteristics.

Status

The final report on the integration of SDI and workers' compensation TD benefits is expected to be available in 2006.

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Barriers to Occupational Injury and Illness Treatment and Prevention Services for Low-Wage Workers in California

Background

In California, over 5 million workers are employed in occupations whose median wage is less than \$10 an hour. These workers -- sewing machine operators, restaurant and food service employees, health aides, cashiers, janitors, hotel maids, assemblers, and farm laborers, among others -- are disproportionately immigrant, minority and non-union workers. They are also the workers least likely to have health insurance or sick leave benefits from their jobs. Although frequently at high risk of occupational injury and illness, low-wage workers often do not complain or seek treatment. The goal of this project is to document barriers and identify strategies for providing effective occupational health treatment and workplace injury and illness prevention efforts for low-wage workers. Specific objectives include:

- Identify barriers and assess strategies for improving initial access to the workers' compensation system for low-wage workers.
- Identify barriers and assess strategies for implementing effective, low-cost prevention measures in the small businesses that employ low-wage workers. (This objective will focus on the garment and the maintenance industries.)
- Identify barriers and assess strategies for improving occupational health services in the public and community health care systems.

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Description

Researchers from the University of California San Francisco (UCSF), Division of Occupational and Environmental Medicine and the School of Nursing Department of Community Health Systems, in conjunction with researchers at the California Department of Health Services, are utilizing interviews, case studies, focus groups, analyses of existing data and worksite surveys in selected industries to address these objectives. To date, focus groups and interviews have been held with six groups of immigrant workers with representation from janitors, farm workers, restaurant workers, day laborers, electronics workers, hotel housekeepers, garment workers and newer refugees working in a variety of low-paid occupations. Interviews have also been conducted with a wide variety of organizations, including labor unions, community groups and social service agencies that assist these workers. Site visits and interviews with ten employers in the garment industry have been completed, and visits to building maintenance companies have been conducted. Further interviews were held with organizations that assist these small businesses and with companies that manufacture janitorial cleaning products and equipment to

assess chemical constituents, the variety of cleaning chemicals, and whether any ergonomic considerations are included in the design of cleaning equipment.

Information collected from these companies aided the development of recommendations to these contractors on overcoming barriers to prevention programs. Preliminary interviews with medical providers have also been completed in preparation for a survey with community health clinics, emergency departments and private occupational health clinics conducted during 2003. A literature review was completed, and supplemental data have been obtained from a variety of sources, including the State Compensation Insurance Fund (SCIF), the Office of Statewide Health Planning and the Bureau of Labor Statistics (BLS). An Advisory Committee, consisting of representatives from industry, labor, the community, and the legal and health care fields, has been established and has met as a group and in subcommittee to provide advice and linkages with appropriate resources.

Findings

Many low-wage workers perform jobs that require considerable physical exertion and which frequently involve repetitive and high-speed tasks, and accidents are common. Some low-wage occupations are at high risk for work-related fatalities. Official reported injuries and illnesses figures therefore underestimate the actual numbers of occupational injuries and illnesses occurring among all workers and low-wage workers. The results of the focus groups and interviews with workers and groups that represent or assist these workers confirm our initial hypotheses that numerous barriers exist which inhibit the reporting of injuries and the effective use of the workers' compensation system, as well as their access to appropriate occupational health care. Chief among these barriers is fear of retaliation by employers if they file claims or seek health care. Some interviewees reported serious acts of retaliation and other efforts to prevent them from obtaining benefits. At particular risk were undocumented workers and workers in industries in which a large sector of the industry exists in the "underground economy." Of equal importance is the lack of knowledge about the workers' compensation system and workplace health and safety rights among this population and the limited assistance available to them in using the system.

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Small businesses predominate in industries that employ low-wage workers and report far fewer occupational injuries and illnesses than large businesses. Small businesses may be less likely to be fully covered by workers' compensation insurance or less familiar with the workers' compensation process, which may lead to underreporting. Some owners of new businesses, especially some first-time business owners, who are confronted with a profusion of state, local and federal requirements, including environmental and health and safety requirements, may not be in compliance with regulations.

So far, site visits to garment factories and building maintenance companies and interviews with workers and employers have indicated that on-the-job-safety training, ergonomic programs, the use of personal protective equipment and efforts at prevention are limited at best. Many of these employers do not have basic injury and illness prevention programs or hazard-communication programs. Personal protective equipment, if supplied, is often inadequate, and little has been done to reduce ergonomic risk factors. Employers interviewed cited barriers to prevention programs such as cultural and language barriers, high worker turnover, and lack of knowledge about where to get assistance. Garment employers also cited the difficulties of staying in business in a rapidly declining industry in the United States as one of the barriers. Researchers from the California Department of Health Services are developing an educational packet that will assist in the development of prevention programs, which will be disseminated to both the garment and janitorial employers at the end of the study.

The study revealed that many of the most vulnerable workers do not have access to health care providers with expertise in recognizing and treating occupational injuries and illnesses. Care is often not sought for chronic conditions (e.g., musculoskeletal disorders). An upcoming survey of providers will shed further light on this problem.

Recommendations

Respondents have proposed a variety of remedies for these problems including strengthening legal penalties for retaliation, providing more appropriately targeted outreach, and enacting various measures to improve access and prevention services. These and other recommendations are discussed in detail in the final report to the Commission on Health and Safety and Workers' Compensation (CHSWC).

The study recommendations include the following:

- Enhance health and safety prevention efforts in low-wage industries.
- Increase inspection of health and safety conditions in target industries.
- Implement effective outreach campaigns to workers.
- Increase access to appropriate occupational health care.

Status

Completed.

Occupational Health and Safety

Cross-state Comparison of Occupational Injury Rates and Time to Return to Work

Background

Assembly Bill (AB) 749 added Labor Code Section 6354.7 requiring the Commission on Health and Safety and Workers' Compensation (CHSWC) to establish and maintain development of training programs for high hazard industries and significant hazards. In response to the above mandate, CHSWC is developing a research study which would provide an assessment of injuries and illnesses in the state of California, as well as compare California to other states. The project will develop appropriate adjustments for each state's injury, illness, and lost/restricted workday rates for the past decade and assist the State of California in identifying areas, such as industries or causes of injury, where there is substantial opportunity to improve the safety of the workplace through education and training.

Cross-state Comparison of Occupational Injury Rates and Time to Return to Work

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Description

The study includes in particular the identification of high-risk industries and occupations, including those with high injury and illness rates and those in which employees are exposed to one or more hazardous substances or where there is a demonstrated need for research to determine effective strategies for the prevention of occupational illnesses or injuries.

The project would measure occupational safety and health performance and identify areas, such as industries or causes of injury, where there is substantial opportunity to improve the safety of the workplace through education and training.

The study focuses on the following research questions:

- How does California compare to other states on the overall safety of its workplaces and how has this changed over time?
- Which California industries are much safer than other states and should be models for national workplace safety?
- Which California industries are much less safe than other states and offer substantial opportunities for improving the State's occupational safety and health through better training and education?

Preliminary Findings

The initial findings of the study indicate that:

CHSWC PROJECTS AND STUDIES

- After adjustment for occupation and industry mix, California has about 10 percent more incidents of injuries and illnesses than would be expected.
- California has the worst record in the nation for returning workers to employment after occupational injuries and illnesses. On average, California workers are on disability longer than any other state and they experience greater duration of restricted work days once back at work.

The next step will be to use the data collected to analyze why California performs poorly across some of these dimensions by analyzing which states have performed exceptionally well and what characteristics of their regulations are particularly effective for safety measures and return-to-work measures.

Status

In process.

Worker Occupational Safety and Health Training and Education Program (WOSHTEP)

Background

Labor Code Section 6354.7 establishes a Worker Occupational Safety and Health Education Fund (WOSHEF) for the purpose of establishing and maintaining a statewide worker-training program. CHSWC has developed a program, WOSHTEP, to raise awareness and promote injury and illness prevention through training and dissemination of materials by a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

Description

CHSWC has taken the following steps in implementing this program:

- **Prepared a Survey of State, National and International Worker Health and Safety Training Programs.** This Survey includes websites and descriptions of available programs and lists courses for each program. The Survey can be found as a link on CHSWC's website.
- **Conducted needs assessments with stakeholders that will continue on an ongoing basis.** Needs assessments are conducted with workers and their representatives, employers, insurers, community-based organizations serving hard-to-reach workers, and potential training providers.
- **Designed a core curriculum** and supplemental training materials based on the results of the needs assessment. This 24-hour curriculum is aimed primarily at "workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on a health and safety committee or serving as a designated safety representative." Participants who complete six core modules and three supplemental modules become Worker Occupational Safety and Health (WOSH) Specialists.
- **Developed a training-of-trainers curriculum to train a statewide network of trainers as mandated by the statute.** Two training-of-trainer sessions were held in northern and southern California, and network trainers have begun co-teaching with mentor trainers from

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the Labor Occupational Safety and Health (LOSH) Program at University of California Los Angeles and the Labor Occupational Health Program (LOHP) at the University of California Berkeley.




- **Established resource libraries** that house and distribute training materials. These resource libraries are located at LOSH and LOHP.
- **Prepared a Multilingual Health and Safety Resource Guide to Worker Training Materials on the Web** by LOHP for WOSHTEP. This Guide is a collection of worker training materials, such as fact sheets, checklists and other educational resources, that are available on-line and can be printed to distribute to workers participating in workplace injury and illness prevention programs.
- **Created a labor-management Advisory Board** to oversee program activities that meets semi-annually. The WOSHTEP Advisory Board consists of employers and workers who assist in guiding development of curricula and broadening partnerships with worker-based organizations, labor studies programs, employers and others.
- **Created Small Business Resources** to target very small employers who do not have the resources to send employees to 24 hours of training. Current curriculum and outreach are focused on owners and managers of small restaurants.

Next Steps

CHSWC has assessed fees to California workers' compensation insurance carriers pursuant to Labor Code Section 6354.7 for the 2005-06 fiscal year. Next steps include:

- **Continued WOSH Specialist training by LOSH and LOHP** in a variety of industries for participants in diverse occupations and work settings. Courses are taught through community colleges, at employers' places of business, and in many other settings.
- **Continued refresher courses** to update WOSH Specialists on health and safety information to assist them in carrying out activities they chose to do in their workplaces after completion of the WOSH Specialist training. Courses are taught in English, Spanish, and Chinese.
- **Continued awareness trainings** drawing on the WOSH Specialist curriculum to help promote awareness of and interest in the WOSH Specialist courses. These trainings are presented in English and Spanish.
- **Ongoing evaluation of courses** to identify accomplishments and outcomes.
- **Ongoing development of a statewide network of trainers** who will partner with mentor trainers from LOSH and LOHP to deliver WOSH Specialist training courses.
- **Additional outreach to ensure wider distribution of multilingual resource training materials.**
- **An additional industry targeted for the Small Business Resources curriculum.**

For further information...

-  CHSWC Report: "Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List" (LOHP, 2003)
-  Check out: <http://www.dir.ca.gov/chswc/WOSHTEP.html>
-  CHSWC Report: "California's Worker Occupational Safety and Health Training and Education Program: A Model for Other States" (IAIABC Journal, Spring, 2005 Vol. 42, No. 1)

Occupational Health and Safety

California Partnership for Young Worker Health and Safety

Background

Every year, about 70 adolescents die from work injuries in the United States, and approximately 70,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

Description

The Commission on Health and Safety and Workers' Compensation (CHSWC) continues to put California in the position of a national leader in protecting and educating teen workers. Over the past several years, CHSWC has sponsored and convened both the California Partnership for Young Worker Health and Safety and the California Resource Network for Young Worker Health and Safety, established by Assembly Bill (AB) 1599 in September 2000. These efforts, in addition to serving California, have inspired similar activity throughout the United States.

The California Partnership for Young Worker Health and Safety is composed of groups and individuals dealing with youth employment and education issues, as well as others who can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, governmental agencies and others.

The purpose of the Partnership is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce.
- Foster awareness and skills in health and safety that will remain with youth throughout their working lives and allow them to take an active role in shaping safe work environments.
- Promote positive, healthy employment for youth.

Status

During the past year, the Partnership met in person four times. In addition, subcommittees held telephone meetings to develop and implement the following activities:

- **Finalize the updated recommendations of the Partnership: "Keeping California's Youth Safe on the Job."** The final recommendations were released in September 2004, and the Executive Summary was provided in CHSWC's 2004 Annual Report. The document includes 33 recommendations for better protecting and educating California's working youth, organized in the following categories: school-based strategies; initiatives in the workplace; strategies in the community; strengthening the role of work permits; strategies for enforcement agencies; and the need for further research. These recommendations form the basis of the Partnership's work plan for the next several years. The following activities reflect this year's priorities. A copy of the report can be downloaded at www.youngworkers.org.

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*Indicates a Resource Network
Member

- Support a youth-led evaluation project.** The goals of this project were to assess how well the Resource Network's information is getting out to teens and to identify ways youth can get engaged in workplace health and safety issues. Six high school students worked at the Labor Occupational Health Program (LOHP) at the University of California Berkeley throughout the summer and fall of to develop and conduct an evaluation plan, which included focus groups and a written survey of over 400 other high school students. The project was conducted with extensive assistance from Youth in Focus, an Oakland-based youth development organization with extensive experience in youth-led projects. The final report was completed in December 2004, and includes key findings and recommendations, which focused on peer education as a key strategy for both involving youth and doing effective youth education.
- Plan and conduct the first Young Worker Leadership Academy.** On February 25th and 26th, 2005, 25 young people from six different organizations around the state attended the first Young Worker Leadership Academy, sponsored by the California Partnership for Young Worker Health and Safety. The goals of this Academy were to teach youth about workplace health and safety and their rights on the job; to help youth start thinking about ways to help ensure that young people do not get hurt on the job; and to provide a forum for these youth to plan for specific actions they could take in the own communities to promote young worker safety. During May and June 2005, each of the six teams successfully conducted their specific project, which included activities such as designing informational brochures to distribute at health centers, conducting workshops on job rights for teens at school and in the community, and holding a teen health and safety or wage and hour rights poster contest.

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(continued on next page)

- **Develop health and safety training materials for restaurant owners** in partnership with the State Compensation Insurance Fund (SCIF), the California Restaurant Association (CRA) and Cal/OSHA Consultation. The project was developed in part with funding from SCIF and became part of the worker Occupational Safety and Health Training and Education Program (WOSHTEP). The materials were developed based on focus group discussions and pilot tests with small restaurant owners and managers and were completed in June 2005. The Partnership has helped explore ways to work specifically with restaurant franchises that hire youth and will continue to identify ways to make these new materials available to them.
- **Promote the seventh annual Safe Jobs for Youth Month public awareness campaign**, which was established by former Governor Gray Davis' proclamation starting in 1999. This year's public awareness and education activities have included a teen poster contest, a student journalism contest, distribution of a resource kit to over 3000 educators and community groups (3000 downloads from the website and 145 hard copies requested to date), a photo and poster exhibit in the Dr. Martin Luther King Jr. Library in San Jose, and a media campaign.
- **Make presentations at several prominent national meetings** highlighting the innovative approaches to protecting young workers being taken in California, including a quarterly FedNet meeting (the network of federal agencies that deal with young worker health and safety), the annual NIOSH Fatality Assessment and Control Evaluation (FACE) Conference, and the annual American Industrial Hygiene Association Conference.
- **Provide oversight and direction of the Resource Network for Young Worker Health and Safety.**

**California Partnership for
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Young Worker Resource Network

The California Resource Network for Young Worker Health and Safety continues to provide coordinated outreach and information services to and on behalf of existing programs for youth.

Over the past year, the Resource Network members, made up of nine organizations with direct access to teachers, employers, and youth, jointly reached and served hundreds of thousands of organizations and individuals throughout California with important health and safety information. Information and training are offered in both English and Spanish.

Resource network accomplishments include:

- More than 2,000 teachers, employers and youth received direct training.
- Approximately 5,000 teachers, employers and youth received written information, such as the fact sheets for teens and for employers or the Safe Jobs for Youth Month Resource kit produced by the University of California Berkeley Labor Occupational Health Program (LOHP).
- About 110 teachers, employers and youth received direct technical assistance via phone or via the www.youngworkers.org website, a 47 percent increase from last year.
- The average number of “hits” per day on the Network’s www.youngworkers.org website has remained steady, for a total of 85,000 hits during the past year. This has included over 16,000 requests for document downloads.
- The most popular downloads have been the Safe Jobs for Youth Month Resource Kit (3,000), the presentation, Why is Job Health and Safety Important for Teens? (1,500), the 2003 Resource Kit (1,500) and a sample article for employer newsletters on young worker health and safety (950).
- At least ten newsletter and newspaper articles were published, in addition to at least four radio and television spots.

Health and safety information continues to be integrated into ongoing state-wide activities of many of the Network partners, including regular in-service training for work-experience and WorkAbility educators, widespread use of Network curricula in job training and work-experience programs, and extensive organizational links to the www.youngworkers.org website.

In the coming year, priorities are to:

- Strengthen and expand youth involvement by holding two more Young Worker Leadership Academies and integrating this year’s participants as leaders/mentors.
- Continue to strengthen the resource network, with a focus on outreach and information tools for the employer community, in particular, the new restaurant health and safety training materials.
- Expand the membership of the Partnership to include greater representation from employers and youth organizations.
- Continue to share the California Partnership for Young Worker Health and Safety model and assist other states to replicate this model.

For further information...



CHSWC Report: “Protecting and Educating California’s Young Workers – Report of the California Study Group on Young Worker Health and Safety” (1998)



Check out: www.youngworkers.org for the California Young Worker Resource Network, providing information for teens, teen workers in agriculture, employers, parents, and educators.

Photography Exhibit and Teen Workshops

Each year, the Governor makes a declaration that the month of May commemorates Safe Jobs for Youth Month. In recognition of this, CHSWC brought photography and poster exhibitions to San Francisco City Hall from May 7 through July 6, 2003, to Los Angeles City Hall from May 17 through June 25, 2004, and to the Martin Luther King Jr. Library at San Jose State University in San Jose on April 5 through May 27, 2005. The exhibits highlighted child labor issues by showing historical photographs of Lewis Wickes Hine and winners of the annual Safe Jobs for Youth Month teen poster competition. In 2005, photographs from Child Labor and the Global Village: Photography for Social Change, were shown jointly with the Lewis Wickes Hine photographs.

San Jose Exhibit Sponsors

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Department of Industrial Relations

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Commission on Health and Safety and Workers' Compensation

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United States Department of Labor

Rebecca Clark, Investigator, Wage & Hour Division

Child Labor and the Global Village: Photography For Social Change

Sarah Bachman

Chivy Sok, Human Rights Activist

Martin Luther King Jr. Library, San Jose State University

Steven Daniel Groth, King Library Events Coordinator

The San Francisco event was co-sponsored with CHSWC, the Department of Industrial Relations (DIR), the State Compensation Insurance Fund (SCIF), the University of California at Berkeley, Labor Occupational Health Program (LOHP), and Brenton Safety, along with the San Francisco Arts Commission. This event also included modern photographs of teens working in New York City by photographer Rebecca Letz.

The Los Angeles event was co-sponsored by CHSWC, UCLA's Labor Occupational Safety and Health (LOSH) Program, the Center for Occupational Environmental Health (COEH), SCIF, Los Angeles City Councilwoman Wendy Greuel, the Los Angeles City Attorney's Office, Los Angeles Cultural Affairs Department, and the California Wellness Foundation. Youth involvement was drawn from the Cesar Chavez Foundation, Constitutional Rights Foundation, the Los Angeles Unified School District (LAUSD) District B, and UCLA. Community partners included the California Regional Environmental Community-L.A. Region, Facing History & Ourselves-L.A. Region, LAUSD Service Learning Task Force, LAUSD School Board member Marlene Canter,

LAUSD Work Experience Office and Skirball Cultural Center.

The San Jose event was co-sponsored by CHSWC, the Department of Industrial Relations (DIR), the University of California at Berkeley, Labor Occupational Health Program (LOHP), the United States Department of Labor (DOL), California Resource Network for Young Worker Health and Safety, Child Labor and the Global Village: Photography for Social Change, and the Martin Luther King Jr. Library at San Jose State University. The exhibit included a Proclamation

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from Governor Schwarzenegger for Safe Jobs for Youth Month, emphasizing efforts by the California Partnership for Young Worker Health and Safety to include year-round education for schools, parents, employers and job trainers on safety measures designed to prevent workplace injuries. The cities of San Jose, San Francisco and Oakland also issued Proclamations emphasizing the importance of health and safety issues in the workplace for young workers and young worker rights and responsibilities.

Lewis Wickes Hine's (American, 1874-1940) work is a traveling exhibition organized by The International Museum of Photography at George Eastman House in Rochester, New York. The exhibit is entitled, "Let Children Be Children, Lewis Wickes Hine's Crusade Against Child Labor."

Hine was a sociologist/photographer hired by the National Child Labor Committee (NCLC) from 1906 to 1912 to document the harsh conditions of child labor in the United States. Hine photographed children working in agricultural fields, manufacturing plants, canneries, mills, coalmines and sweatshops, and selling newspapers. Hine's photographs illustrated that children were subjected to conditions that damaged their health and deprived them of an education and a future. The exhibition is a telling look of the industrialization of America and the appalling circumstances endured by poor, working-class children until legislation against child labor prevailed in 1938.

The exhibit in San Jose provided an opportunity to focus on global child labor issues in addition to historical U.S. child labor experience and legislation. The global issues were highlighted with a presentation by a former Cambodian child laborer who is now a human rights activist. Another focus of the exhibit was the winning posters from the teen poster contest on young worker health and safety rights and responsibilities, which were hung in the Teen Center of the Library.

Next Steps

CHSWC looks forward to working again with our partners in 2006 to educate youth and the public on historical child labor and current young worker issues.

CHSWC Issue Papers

Public Access to Workers' Compensation Insurance Coverage Information

Background

In April 2005, Assembly member Keith Richman requested that CHSWC prepare an issue paper regarding public access to workers' compensation insurance coverage information. In response to this legislative request, CHSWC staff developed the issue paper "Public Access to Workers' Compensation Insurance Coverage Information."

Description

The CHSWC staff issue paper, "Public Access to Workers' Compensation Insurance Coverage Information," discusses the feasibility of a proof-of-coverage database which is accessible to the public. About a quarter of the states have a proof-of-coverage database only for government use. Texas, Florida and Michigan have already implemented a database that allows public access to coverage information.

Findings

The issue paper has identified many advantages for a proof-of-coverage database which will be accessible by and serve the entire workers' compensation community. For example:

- Employers are protected from broker fraud because they may verify that they are covered for workers' compensation insurance.
- Workers are protected from lack of workers' compensation coverage; employees and/or their representatives may verify that the employer is covered for workers' compensation insurance.
- Insurers may ascertain if another insurance company could potentially share the liability in certain claims.
- Service providers may determine the appropriate insurance carrier to bill.
- The State would achieve cost savings by handling fewer inquiries and requests for data via letters and phone calls.
- The State could identify illegally uninsured employers more easily which could reduce the Uninsured Employers Fund (UEF) payout each year.

Status

At its April 28, 2005, meeting CHSWC approved the release of the Issue Paper to the public.

For further information...



CHSWC issues paper on public access to Workers' Compensation insurance coverage information, April 2005



<http://www.dir.ca.gov/CHSWC/ProofofCoverage.pdf>

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California

Background

Labor Code Section 4651 of Assembly Bill (AB) 749 requires the Commission on Health and Safety and Workers' Compensation (CHSWC) to assist the Administrative Director (AD) in making a report on or before July 1, 2004, that offers recommendations on how to improve farm workers' access to workers' compensation benefits.

In the course of investigation on improving access to workers' compensation benefits, CHSWC staff identified potential areas for administrative savings in implementing an electronic deposit system instead of the current check-writing system for unemployment and disability benefits.

Some of the benefits of moving to an electronic payment system include cost savings, timely delivery of benefits to recipients, elimination of the problem of checks being lost in the mail, and potential for reduced fraud.

Description

The issue paper proposes ways to improve administrative efficiency and reduce the transaction costs of processing paper checks for the payment of unemployment and disability benefits in the State of California.

Staff also conducted a preliminary review of California administrative systems with the potential of administrative savings by adopting electronic deposit and/or electronic benefit transfer (EBT).

CHSWC staff has contacted and worked with the Employment Development Department (EDD), the State Controller's Office, the Division of Workers' Compensation (DWC), the State Compensation Insurance Fund (SCIF), the California Workers Compensation Institute (CWCI), and the states of Ohio, Iowa and Wisconsin. Additional contacts were made with Federal government benefit programs.

The paper indicates that over \$2.8 billion of administrative savings could be achieved by:

- Utilizing electronic deposit by mandating that it be offered by payors to payees in lieu of paper check disbursements.
- Utilizing EBT cards for un-banked recipients.

These efficiencies could be used for unemployment insurance (UI), state disability insurance (SDI), workers' compensation, non-industrial disability insurance (NDI), uninsured employers, and other administrative systems.

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Status

A draft issue paper was prepared in August 2004 and finalized in November 2004.

For further information...



CHSWC white paper on Cost/Benefit of implementing electronic deposit for unemployment and disability benefits in the State of California (CHSWC 2004)



http://www.dir.ca.gov/chswc/CHSWC_AccesstoFunds.pdf



Baker Christine, Irina Nemirovsky, D. Lachlan Taylor, "CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California" (IAIABC Journal, Spring, 2005 Vol. 42, No. 1)

The Relationship between Employer Health Promotion Measures and Workplace Injury and Illness Prevention: a CHSWC-NIOSH Study

Background

Poor health habits, such as smoking, problem drinking, unhealthy nutrition and sedentary lifestyles, have been identified as major causes of preventable illness and death in the United States and worldwide. These habits are associated with substantial medical costs and morbidity, making them prime targets of health-promotion activities. Currently, relatively little is known about the distribution of these costs to employers and how they differentially affect health care, disability, and workers compensation.

Recently, the National Institute of Occupational Safety and Health (NIOSH) has begun a large, multi-year initiative to help employers build programs to reduce occupational injuries and promote the health of workers.

Description

A number of possible explanations exist as to why workplace health promotion and injury prevention could be related. Healthier individuals are more resilient to workplace injuries and less likely to miss time from work if they suffer a workplace injury. This issue is particularly important considering the prominent role of chronic conditions in workers' compensation. Poor health habits that make individuals more susceptible to chronic back pain, for example, could result in higher health care expenditures, higher workers' compensation expenditures, or both.

As part of the NIOSH initiative and CHSWC study on employer costs, RAND is undertaking an analysis for CHSWC that will provide a first look into the relationship between observable health habits and the onset of workplace injuries and illnesses and the possible affect of this relationship on employer costs. This analysis is part of the CHSWC study on identifying full employer costs of workplace injuries. The goal of the study is to lower employer cost and improve worker health.

As part of the analysis to be prepared by RAND, past studies on the effectiveness of injury-prevention and health-promotion activities will be reviewed and the results of each in light of a descriptive analysis on the relationship between health habits and workplace injuries, if any, will be discussed. This information will be used to formulate the potential magnitude of the impact of health-promotion activities on total payroll costs. This research should both provide policy makers with new information on an important public health concern and pave the way for new research into the relationship between health and work.

Status

The draft report is expected to be completed in 2005.

Project Team

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Disability Retirement Benefits for Public Safety Officers

Background

The provision of public safety is one of the most important responsibilities of government. Workers charged with protecting the public routinely put their own lives and well-being at risk. It is documented that, in general, public safety employees tend to have much higher-than-average rates of work-related injuries and illnesses, both fatal and non-fatal, as compared to other sectors. Because public safety occupations inherently entail significant risk and because of the social importance of the services these employees provide, public safety employees are usually rewarded with comparatively higher compensation in the event of a work-related injury.

The high incidence and high cost of injuries sustained by public safety employees raise a number of important policy questions. For instance, do workers' compensation and disability retirement benefits provided to public safety employees adequately compensate them for disabling injuries? Could specific safety interventions reduce the frequency of injuries to public safety employees and thereby lower the cost of providing workers' compensation and disability retirement benefits to these workers? What types of injuries do public safety employees suffer and at what ages, as compared to other public employees?

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Description

The high rate of injury and disability sustained by vital public safety employees, particularly police and firefighters, is of great concern to the workers' compensation community

In October 2004, Assembly members Juan Vargas and Rick Keene requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study of public sector injury prevention. In particular, they have requested a comprehensive evaluation and development of recommendations on effective public safety employee injury and illness prevention measures.

In response to the above bi-partisan request, CHSWC has contracted with RAND in September 2005 to conduct a study that will assist the legislature in its goals to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured. The study would address the following topics:

- Describe the incidence and types of injuries suffered by public safety employees and assess how the distribution of these injuries differs from that of other public (and potentially private) employees.

CHSWC PROJECTS AND STUDIES

- Explore which aspects of public safety employment lead to the greatest injury and disability rates and whether specific interventions could reduce the risk of injury among those workers.
- Estimate the impact of disability on the earnings of public safety employees and assess the adequacy of workers' compensation and disability benefits provided to these injured workers.
- Examine the extent to which disability retirements for public safety employees have changed over time and what factors have contributed to any observed trends.

Status

A joint CHSWC/National Institute of Occupational Safety and Health (NIOSH) report is expected to be completed in 2007.

Fraud

Background

At the December 10, 2004, CHSWC meeting, William Zachry, Chair of the Fraud Assessment Commission (FAC), requested that CHSWC assist with anti-fraud research. In response to this request, CHSWC has established a working group to develop a proposal that would assist the FAC to identify, measure and focus anti-fraud efforts effectively.

Description

CHSWC is assisting the FAC in conducting a study that would determine the extent of workers' compensation medical overpayments and underpayments of all types, including suspected fraud, waste, abuse, billing and processing errors, in order to allocate the appropriate level of resources to detect and evaluate suspected medical provider fraud in California. In the process of the study, which focuses primarily on medical suspected fraud, the study should focus primarily on developing ongoing measurements for medical underpayments and overpayments. In addition, the study should report other findings of suspected fraud detected in the course of the study.

A second CHSWC and FAC study will evaluate fraud and abuse related to lack of coverage and premium avoidance by estimating the number of employers who are uncovered for workers' compensation by looking at the population of employers with claims in the Uninsured Employer Fund (UEF) to identify employers reporting employment and wages to the Employment Development Department (EDD) that are uncovered for workers' compensation. It will also identify employers who do not report employment and wages to EDD that are uncovered for workers' compensation.

The study will also assess under-reporting of occupational injuries and illnesses through a survey of California adults to determine the incidence and prevalence of occupational injuries and illnesses and the portion that are unreported; it will also assess investigating whether available California workers' compensation data, in combination with Bureau of Labor Statistics (BLS) data, are sufficient to allow a detailed use of the most sophisticated analytic approach to estimating under-reporting.

Finally, the study will evaluate premium avoidance by insured employers who are failing to report all payroll to their insurer or failing to report payroll in the correct class code or shifting reporting to less risky classes. The objective will be to separately evaluate high- and low-risk industry/occupation groups to make better estimates of the degree to which fully compliant employers, especially in high-risk industries, are subsidizing under-reporting employers.

Status

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CHSWC PROJECTS AND STUDIES

The study is subject to funding availability.

CHSWC PROJECTS AND STUDIES

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OVERVIEW OF ALL CHSWC PROJECTS AND STUDIES

Permanent Disability

Initial Wage Loss Analyses

Status: Completed

CHSWC Reports:

Compensating Permanent Workplace Injuries: A Study of the California System (RAND, 1998)
Findings and Recommendations on California's Permanent Partial Disability System-Executive Summary (RAND, 1997)

<http://www.rand.org/publications/MR/MR919/>

Enhancement of Wage Loss Analysis – Private Self-Insured Employers

Status: Completed

CHSWC Reports:

Permanent Disability, Private Self-Insured Firms (RAND, 2000)

<http://www.rand.org/publications/MR/MR1268/>

Enhancement of Wage Loss Analysis – Public Self-insured Employers

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Impact of Local Economic Conditions on Wage Loss

Status: Completed

CHSWC Report:

Trends in Earnings Loss from Disabling Workplace Injuries in California – The Role of Economic Conditions (RAND, 2001)

<http://www.rand.org/publications/MR/MR1268/>

Permanent Disability Rating Tool

Status: In process

CHSWC Report:

The Evaluation of California's Permanent Disability Rating Schedule: Interim Report (RAND, 2003)

<http://www.rand.org/publications/DB/DB443/index.html>

Return to Work

Analysis of Wage Loss and Return to Work (RTW) in Other States

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

“Best Practices” Encouraging Return to Work

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Review of Literature on “Modified Work”

Status: Completed

For further information...

CHSWC Report:

Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? (1997)

http://www.dir.ca.gov/CHSWC/Modified_Work_Krause.html

Policies and Strategies to Help Injured Workers Return to Sustained Employment

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

Return to Work in California: Listening to Stakeholders' Voices (2001)

<http://www.dir.ca.gov/CHSWC/RTWinCA0701.html>

Primary Treating Physician Effectiveness in Return to Work (RTW) After Low-Back Injuries

Status: First phase: Completed

Second phase: In process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

Physical Workplace Factors and Return to Work After Compensated Low-Back Injury: A Disability Phase-Specific Analysis” (JOEM, 2000)

Predictors and Measures of Return to Work

Status: Completed

CHSWC Report:

Determinants of Return to Work and Duration of Disability After Work-Related Injury of Illness:

Developing a Research Agenda: (2001)

<http://www.dir.ca.gov/chswc/Determinants.pdf>

Workers' Compensation Reforms

Assembly Bill 749 Analysis

CHSWC Report:

CHSWC and AB 749 as Amended (2002)

<http://www.dir.ca.gov/CHSWC/749Report/AB749asamended112202.html>

CHSWC and AB 749 (2002)

<http://www.dir.ca.gov/CHSWC/ab749.html>

Evaluation of the Division of Workers' Compensation (DWC) Audit Function (*Special Study at the Request of the Legislature*)

Status: Completed

CHSWC Report:

CHSWC Report on the Division of Workers' Compensation Audit Function (1998)

<http://www.dir.ca.gov/CHSWC/FinalAuditReport.html>

Executive Summary (1998)

<http://www.dir.ca.gov/CHSWC/AuditSummaryCover.html>

Medical-legal Study

Status: Ongoing

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Reports:

Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey (1997)

http://www.dir.ca.gov/CHSWC/DisabilityReport/data_and_methodology.html

Executive Summary (1997)

<http://www.dir.ca.gov/CHSWC/DisabilitySummary/execsummary.html>

Vocational Rehabilitation Study

Status: In process

For further information...

See "Best Practices" Encouraging Return to Work in project synopsis section.

CHSWC Reports:

Vocational Rehabilitation Reform Evaluation (2000)

<http://www.dir.ca.gov/CHSWC/Vocrehabreform2000.pdf>

Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms" (1997)

<http://www.dir.ca.gov/CHSWC/rehab/rehabcover.html>

"Carve-outs" – Alternative Workers' Compensation Systems

Status: Completed

CHSWC Report:

Carve-outs" in Workers' Comp: Analysis of Experience in the California Construction Industry (1999)

<http://www.dir.ca.gov/CHSWC/CarveOutReport/CarveoutReport.html>

Workers' Compensation Reforms (continued)

Evaluation of Treating Physician Reports and Presumption

Status: Completed

CHSWC Report:

Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician (1999)

<http://www.dir.ca.gov/CHSWC/Report99/TPhysician.html>

Update of Treating Physician Reports and Presumption Study

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician (1999)

<http://www.dir.ca.gov/CHSWC/Report99/TPHYCover.htm>

CHSWC Report:

Doctors and Courts: Do Legal Decisions Affect Medical Treatment Practice? (2002)

<http://www.dir.ca.gov/CHSWC/CHSWCLegalDecAffectMedTreatPractice/ptpfinalrpt.html>

Evaluation of Labor Code Section 5814 Penalty Provisions

Status: Completed

CHSWC Report:

Issue Paper on Labor Code Section 5814 (2000)

<http://www.dir.ca.gov/CHSWC/LC5814Cvr.html>

CHSWC Report:

Background Paper on Labor Code Section 5814 (1999)

<http://www.dir.ca.gov/CHSWC/LC5814Cvr.html>

“Baseball Arbitration” Provisions of Labor Code Section 4065

Status: Completed

CHSWC Report:

Preliminary Evidence on the Implementation of Baseball Arbitration (1999)

http://www.dir.ca.gov/CHSWC/Baseballarbfinal_percent27rptcover.htm

CHSWC Response to Questions from the Assembly Committee on Insurance

Status: Completed

CHSWC Report:

CHSWC Response to Questions from the Assembly Committee on Insurance (2001)

Occupational Safety and Health

Project: Worker Occupational Safety and Health Training and Education Program

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

State, National and International Safety and Health Training Program Resources (2003)

<http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html>

CHSWC Report:

Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List (2003)

<http://www.dir.ca.gov/chswc/MultilingualResourceSite2fromLOHP.doc>

California Partnership for Young Worker Health and Safety

Status: Ongoing

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

Protecting and Educating Young Workers: Report of the California Study Group on Young Worker Health and Safety" (1999)

www.youngworkers.org for the California Young Worker Resource Network, providing information for teens, teen workers in agriculture, employers, and educators

<http://www.dir.ca.gov/chswc/TrainingProgramsResources/Surveycover.html>

Project: Photography Exhibit and Teen Workshops

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Cross-state Comparison of Occupational Injury Rates and Time to Return to Work

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Workers' Compensation Administration

Selected Indicators in Workers' Compensation

Status: Completed

CHSWC Report:

Selected Indicators in Workers' Compensation: A Report Card for Californians, February 2005

http://www.dir.ca.gov/CHSWC/WC_ReportCard_Feb2005.pdf

Workers' Compensation Court Management and Judicial Function Study

Status: Completed

CHSWC Report:

Improving Dispute Resolution for California's Injured Workers (RAND, 2003)

<http://www.rand.org/publications/MR/MR1425/index.html>

Court Technology Project

Status: Completed

CHSWC Report:

Briefing on the Use of Technology in the Courts" (2003)

Feasibility Study Report (Gartner, 2003)

Local Forms and Procedures – Labor Code Section 5500.3

Status: Completed

For further information...

CHSWC 1998-99 Annual Report: Projects and Studies Section

Profile of Division of Workers' Compensation (DWC) District Office Operations

Status: Completed

For further information...

CHSWC 1997-98 Annual Report: Program Oversight Section

CHSWC Roundtable on Division of Workers' Compensation (DWC) Lien Workload

Status: Completed

For further information...

CHSWC 1998-99 Annual Report: Projects and Studies Section

Information Needs

Benefit Notices Simplification Project

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Report:

Project to Improve Laws and Regulations Governing Information for Workers (2000)

CHSWC Report:

Navigating the California Workers' Compensation System: The Injured Workers' Experience (1996)

<http://www.dir.ca.gov/CHSWC/navigate/navigate.html>

Workers' Compensation Information Prototype Materials

Status: Completed

CHSWC Report:

Project to Augment, Evaluate, and Encourage Distribution of the Prototype Educational Materials for Workers (2000)

Workers' compensation Fact Sheets and a video:

"Introduction to Workers' Compensation" is available at

<http://www.dir.ca.gov/chswc/EduMaterials.html>

Consolidating and Coordinating Information for Injured Workers

Status: English version completed. Spanish version completed

CHSWC Report:

A Guidebook for Injured Workers, 2nd Edition (2005)

<http://www.dir.ca.gov/chswc/Guidebook-2005.pdf>

Workers' Compensation Medical Care in California Fact Sheets

Status: Completed

Website:

http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm

Workers' Compensation Carve-Out Guidebook

Status: Completed

CHSWC Report:

Carve-Outs: A Guidebook for Unions and Employers in Workers' Compensation (2004)

www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.doc

Medical Care

Medical Treatment Study

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Study on Medical Treatment Protocols

Status: Completed

CHSWC Reports:

CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (2004)

http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.pdf

Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, 2004)

<http://www.rand.org/publications/WR/WR203/>

Executive Summary (RAND, 2004)

http://www.dir.ca.gov/chswc/WR-203_ExSum_111504cd_FINAL.pdf

Repackaged Drugs Study

Status: Completed

CHSWC Issue Paper:

Paying for Repackaged Drugs under the California Workers' Compensation Official Medical Fee Schedule, May 2005

http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf

Workers' Compensation Pharmaceutical Costs Study

Status: Completed

CHSWC Report:

Study of the Cost of Pharmaceuticals in Workers' Compensation (June 2000)

<http://www.dir.ca.gov/CHSWC/Pharmacy/pharmacover.html>

Executive Summary (June 2000)

http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm

Burn Diagnostic Related Groups (DRGs) Study

Status: Completed

CHSWC Report

Payments for Burn Patients under California's Official Medical Fee Schedule for Injured workers, May 2005

<http://www.dir.ca.gov/CHSWC/WR-263.Burn050525.pdf>

Inpatient Hospital Fee Schedule and Outpatient Surgery Study

Status: Completed

CHSWC Report:

Inpatient Hospital Fee Schedule and Outpatient Surgery Study (Gardner and Kominski, 2002)

Summary of Findings of the Inpatient Hospital Fee Schedule and Outpatient Surgery Study (2002)

<http://www.dir.ca.gov/CHSWC/HospitalFeeSchedule2002/HospfeeschedulePage1.html>

Medical Care (continued)

California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work

Status: Summary of proceedings in process.

For further information...

See the project synopsis in the Projects and Studies Section.

Website

<http://www.dir.ca.gov/CHSWC/CAResearchColloquium/Colloquium.html>

American Medical Association Guides Training Conference

Status: Ongoing

For further information...

See the project synopsis in the Projects and Studies section.

Website:

Website: http://www.dir.ca.gov/chswc/chswc_whatsnew.html
www.Amasolutions.com

CHSWC Study on 24-Hour Care

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Reports:

RAND Working Paper "Assessment of 24-Hour Care Options for California (RAND, January 2005)

<http://www.rand.org/publications/MG/MG280/>

CHSWC Background Paper: Twenty-four Hour Care (December 2003)

http://www.dir.ca.gov/CHSWC/CHSWC_24hCare.pdf

Workers' Compensation Medical Billing Process

Status: Completed

For further information...

CHSWC Background Paper:

Background Information on Workers' Compensation Medical Billing Process, Prepared for The Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations" (2003)

Workers' Compensation Medical Payment Systems

Status: Completed

CHSWC Staff Report:

Workers' Compensation Medical Payment Systems: A Proposal for Simplification and Administrative Efficiency, Prepared for The Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations" (2003)

http://www.dir.ca.gov/CHSWC/CHSWC_WCMedicalPaymentSystem/CHSWC_WCMedicalPaymentSystem.pdf

CHSWC Report:

Adopting Medicare Fee Schedules: Considerations for the California Workers' Compensation Program (RAND, 2003)

http://www.dir.ca.gov/CHSWC/MR-1776.0_070803_1.pdf

Medical Care (continued)

Barriers to Occupational Injury and Illness Treatment and Prevention Services for Low-wage Workers in California

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Study on Spinal Surgery Second Opinion Process

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

State Disability Insurance Integration Project

Status: In process

For further information...

See the project synopsis in the Projects and Studies section.

Community Concerns

Public Access to Workers' Compensation Insurance Coverage Information

Status: Completed

CHSWC Report:

CHSWC Issue Paper on Public Access to WC Insurance Coverage Information, April 2005

<http://www.dir.ca.gov/CHSWC/ProofofCoverage.pdf>

U.S. Longshore and Harbor Workers' Compensation Market in California

Status: Completed

CHSWC Report:

United States Longshore and Harbor Workers' Compensation Market in California, April 2005

<http://www.dir.ca.gov/CHSWC/USLongshoreAndHarborPaper.pdf>

Benefit Simulation Model

Status: Completed

For further information...

A CD with the "Workers' Compensation Benefit Simulation Model," as well as instructions for its use, is available for purchase from CHSWC.

Workers' Compensation and the California Economy

Status: Completed

CHSWC Report:

Update – Workers' Compensation and the California Economy (2000)

<http://www.dir.ca.gov/CHSWC/CalEconomy/CalEconomyCover.html>

Workers' Compensation and the California Economy (2000)

<http://www.dir.ca.gov/CHSWC/CalEconomy/CalEconomyCover.html>

Evaluation of Workers' Compensation Cost and Benefit Changes Since the Beginning of the 1989 and 1993 Reforms (*Special Study at the Request of the Legislature*)

Status: Completed

CHSWC Report:

Workers' Compensation Cost and Benefit Changes Since Beginning of Reform (1999)

<http://www.dir.ca.gov/CHSWC/Report.htm>

CHSWC Report:

Executive Summary Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability (1999)

<http://www.dir.ca.gov/CHSWC/ExecutiveSummary.htm>

CHSWC Report:

Summary Estimating the Workers' Compensation Reform Impact on Employer Costs and Employee Benefits" (1999)

<http://www.dir.ca.gov/CHSWC/Summary.htm>

CHSWC 1998-99 Annual Report incorporates this report.

Community Concerns (continued)

Workers' Compensation Anti-fraud Activities

Status: Completed

CHSWC Report:

Workers' Compensation Anti-Fraud Activities – Report on the CHSWC Public Fact-Finding Hearing" (1997)

<http://www.dir.ca.gov/CHSWC/Fraud/Fraudreport.html>

CHSWC Report:

Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring Them Into Compliance (1998)

<http://www.dir.ca.gov/CHSWC/uefcover.html>

CHSWC Report:

Report on the Campaign Against Workers' Compensation Fraud (2000)

<http://www.dir.ca.gov/CHSWC/Fraud/Fraudcover.html> (May 2000)

CHSWC Report:

Report on the Workers' Compensation Anti-Fraud' Program (2001)

<http://www.dir.ca.gov/CHSWC/Finalfraudreport0801.html> (August 2001)

Attachments: <http://www.dir.ca.gov/CHSWC/WCSAntiFraudAttachment.html>

Illegally Uninsured Employers Study

Status: Completed

CHSWC Report:

Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring Them Into Compliance (1998)

<http://www.dir.ca.gov/CHSWC/uefcover.html> (December 1998)

State of the California Workers' Compensation Insurance Industry

Status: Ongoing

CHSWC Background Paper:

State of the California Workers' Compensation Insurance Industry (2002)

<http://www.dir.ca.gov/CHSWC/StateInsuranceIndustry2002/Stateinsuranceindustry042002.html>

CHSWC Issue Papers

Study of Labor Code Section 132a

Status: Completed

CHSWC Background Paper:

Update on Labor Code Section 132a and Employer Termination of Health Insurance Coverage:
Calif. Supreme Court Decision in *State of California, Dept of Rehab v. WCAB (Lauher)* (2003)
<http://www.dir.ca.gov/chswc/Lauher132aUpdate.doc> or
<http://www.dir.ca.gov/chswc/Lauher132aUpdate.pdf>

Information on Industrial Medical Council's (IMC) Disciplinary Actions Taken on Qualified Medical Evaluators (QMEs)

Status: Completed

CHSWC Background Paper:

Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulations of QMEs (July 2003)

http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.doc or
http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.pdf

School District Workers' Compensation Liability – Labor Code Section 3368

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California

Status: Completed

For further information...

See the project synopsis in the Projects and Studies section.

CHSWC Paper:

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California (2004)
http://www.dir.ca.gov/chswc/CHSWC_Accesstofunds.doc

CHSWC AND THE COMMUNITY

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Check out www.dir.ca.gov/chswc for:

- What's New.
- Reports of CHSWC studies, issue papers and projects.
- News releases.
- CHSWC meeting schedules and minutes.
- DIR young workers website.
- Educational materials, fact sheets, video.
- State, national and international safety and health training programs and resources.
- Worker Occupational Safety and Health Training and Education Program (WOSHTEP)

CHSWC Publications

In addition to the many reports listed in the CHSWC Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports
1994 through 2004
CHSWC Strategic Plan 2002

Community Activities

CHSWC is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

American Society of Workers' Comp Professional, Inc

2nd Annual Leadership Conference
Executive Officer presentation

California Association of Neurological Surgeons

Annual Meeting
CHSWC staff presentation

California Coalition on Workers' Compensation

2nd Annual Legislative Conference

California League of Food Processors

Workers' Compensation Workshop
CHSWC staff presentation

California Legislature

Assembly Member Dario Frommer
Assembly Member Juan Vargas
Senator Jackie Speier
Senator Charles Poochigian
Senator Tom Torlakson

California Workers' Compensation Institute

Annual meeting

Department of Insurance

Fraud Assessment Commission Meeting

Disability Management Employer Coalition

Annual meeting
Executive officer presentation

International Association of Industrial Accident Boards and Commissions

91st annual convention
All Committee Conference
Executive Officer served as Chair of the IAIABC prevention, benefit adequacy and cost-containment prevention and safety committee

Industrial Claims Association

Annual conference
CHSWC staff presentation

Kaiser Permanente

Carve-out Conference
Executive officer presentation

Keenan & Associates

Workers' Compensation Symposium
Executive officer and staff presentation

Workers' Compensation Research Institute

Annual Issues and Research Conference

Workers' Compensation Research Group

Advisory Group meeting

CHSWC Awards

The Commission on Health and Safety and Workers' Compensation (CHSWC) was presented the International Association of Industrial Accident Boards and Commissions (IAIABC)/Workers' Compensation Research Institute (WCRI) 2003 Workers' Compensation Research Award for its Medical Payment Systems Study. The award honored "the best workers' compensation agency research product using data and analysis to answer an important public policy question of national interest."

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Association of Injured Workers

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The Honorable Fabian Nunez, Speaker of the Assembly

The Honorable Richard Alarcón, Chair, Senate Labor & Industrial Relations Committee

The Honorable Charles Poochigian, Chair, Senate Republican Caucus

The Honorable Jackie Speier, Chair, Insurance Committee

The Honorable Tom Torlakson, Chair, Local Government Committee

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CHSWC AND THE COMMUNITY

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CHSWC AND THE COMMUNITY

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California Coalition on Workers' Compensation
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California Labor Federation
State Building and Construction Trades Council of California
California Teamsters Public Affairs Council
Law Offices of Barry Broad
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California Correctional Peace Officers Association
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Kammerer & Company
Medex Healthcare
Philip M. Vermeulen
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Acclamation Insurance Management Services
Jopari Solutions Inc.
CID Management
CompPartners
Bickmore Risk Services
St. Joseph Health System
The Henderson Insurance Agency
Southern California Association of Occupational Health Nurses
International Association of industrial Boards and Commissions
Workers' Compensation Insurance Rating Bureau

CHSWC AND THE COMMUNITY

Disability Management Insights

New Method Floor Co, Inc.

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